EXHIBIT 5a(i)(8)

7-30-2012 Response to the DOT

547 W. Jackson Blvd. Chicago, IL 60661 (312) 322-6900 TTY# 1-312-322-6774

July 30, 2012

Mr. Dominick J. Gatto, PE
Director, Office of Program Management and Oversight
Federal Transit Administration, Region V
200 West Adams Street, Suite 320
Chicago, Illinois 60606-2789

Attn: Melody Hopson

Re: Metra Response to FTA
Procurement System Review Letter

Dear Mr. Gatto:

Attached please find Metra's first response to the June 15th letter which requested certain information about Metra's progress in implementing promised improvements to correct deficiencies discovered in the 2011 Procurement System Review (PSR). This response contains all information requested by July 30th, except those items identified in our July 23rd extension request, detailed below. Under separate cover, Metra is concurrently transmitting our response regarding the EMS contract, as requested in your June 15th letter.

In the body of the July 15th letter, five items were requested, set off by bullet points. Attached with this transmittal are replies to the first four: 1) a detailed organization chart for the Procurement Department; 2) evidence that all involved in the purchasing process have received training; 3) evidence that the Procurement staff in particular has received adequate training; and 4) evidence of a process to review and validate contracts on an on-going basis. The final bullet point, evidence of a fully-developed procurement audit oversight function, will be submitted by October 31st, consistent with the deadline for detailing the independent evaluation process for action item implementation noted in Category 3 of Attachment 1 of your June 15, 2012 letter.

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Regarding follow-up actions for the twenty open findings, Attachment 1 to your letter requests three categories of response, two due by July 30th, and one by October 31st. The response to Category 1, requesting a training schedule for all twenty open findings, is attached. Category 2 requests a milestone schedule for coming into compliance for seven of the open findings. Attached is our response to action items 6, 19, 37, and 39. Metra's July 23rd letter to FTA requested extension from the July 30th deadline to September 30th for action items 2, 5, and 48, due to their complexity. Finally, Metra intends to supply the third category response, an independent procurement action evaluation plan for all open items, by the requested October 31st deadline. A summary of Metra's responses is attached.

If you require any additional information regarding our requested extension, please contact me at (312) 322-6639.

Sincerely,

Lawrence Bubel

Lawrence Bubel
Senior Director
Grant Management and Accounting

cc: T. Barnett
J. Milano
T. Farmer
R. Capra
P. Kisielius
G. Urban
C. Gamboa
D. Simmons

Metra 2011 Procurement System Review Response July 30, 2012

Category 1
Metra shall provide by July 30, 2012, a schedule for procurement training to FTA as a condition for accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Category 2
Metra shall provide by July 30, 2012, a milestone schedule of all procurement actions to come into compliance with FTA requirements as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA

Category 3
Metra shall provide by October 31, 2012 as to how it will conduct an objective and independent evaluation to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition for accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

Summary Follow Up Actions (FINAL) - Open Findings

		Follow Up Action Category Submitted by			
		1	2	2	3
	Metra 2011 PSR System-wide Elements - Open Findings	**July 30th**	**July 30th**	**Sept. 30th**	**Oct. 31st**
1	2 - Contract Administration System	•		•	•
2	5 - Procedures of Ensuring Most Efficient and Economic Purchase	•		•	•
3	6 - Procurement Policies and Procedures	•	•		•
4	7 - Independent Cost Estimate	•			•
5	12 - Arbitrary Action	•			•
6	13 - Brand Name Restrictions	•			•
7	15 - Contract Term Limitation	•			•
8	16 - Written Procurement Selection Procedures	•			•
9	18 - Award to Responsible Contractors	•			•
10	19 - Sound and Complete Agreement	•	•		•
11	24 - Clear, Accurate, and Complete Specification	•			•
12	25 - Adequate Competition - Two or More Competitors	•			•
13	36 - Evaluation {RFP}	•			•
14	37 - Price and Other Factors {RFP}	•	•		•
15	39 - Cost Analysis Required {Sole Source}	•	•		•
16	41 - Cost or Price Analysis	•			•
17	42 - Written Record of Procurement History	•			•
18	46 - Progress Payments	•			•
19	48 - Cost Plus Percentage of Cost	•		•	•
20	56 - Clauses	•			•

Metra
The way to really fly
547 W. Jackson Blvd. Chicago, IL 60661 (312) 322-6900 TTY# 1-312-322-6774

July 30, 2012

Mr. Dominick J. Gatto, PE
Director, Office of Program Management and Oversight
Federal Transit Administration, Region V
200 West Adams Street, Suite 320
Chicago, Illinois 60606-2789

Attn: Melody Hopson

Re: EMS Contract Reconciliation

Dear Mr. Gatto:

Marisol Simón's June 15th letter to Alex Clifford (Attachment 1) requested Metra to provide evidence that we have reconciled the EMS contract to account for audited adjustments in the overhead rates. Contingent upon satisfactory response to the requested corrective actions, the current EMS contract remains eligible for FTA participation. Below is a brief description of our efforts to resolve this issue.

On September 15, 2010, Metra informed FTA via letter (Attachment 2) that we discovered an estimated overpayment to EMS of $463,398.87 under their 2005-2008 contract due to using the provisional overhead rate throughout the period. In response, FTA suspended reimbursement for expenses incurred against EMS activities and Metra withheld payment of EMS invoices, pending resolution. Close examination of the audited financial rates from 2005-2008 yielded a revised estimate of the amount owed Metra of $452,729.00, as documented in Attachment 3. The audited overhead rates used in this determination are shown in Attachment 4. Adjustments to invoices from 2009-11 are shown in Attachment 5, using rates from Attachment 4. The net difference between what was paid, $874,632.55, and what was owed, $988,234.97 (including withheld payments and recalculated overhead costs), was $113,602.42 due to EMS. On April 19, 2012, Metra provided a check to EMS in this amount.

Metra's payment to EMS resolves the payment irregularity first discovered in 2010, and clears the way for EMS to perform and be reimbursed for the final months of their current contract, due to expire in October of this year. If FTA finds this documentation acceptable, we will resume charging and seeking reimbursement from an FTA grant. If you require any additional information regarding this matter, please contact me at (312) 322-6639.

Sincerely,

Lawrence Bubel

Lawrence Bubel
Senior Director
Grant Management and Accounting

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06-20-12P02:50 RCVD

U.S. Department
of Transportation
Federal Transit Administration

REGION V
Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 320
Chicago, IL 60606-5232
312-353-2789
312-886-0351 (fax)

June 15, 2012

Mr. Alexander Clifford
Executive Director and CEO
Metra
547 West Jackson Blvd.
Chicago, Illinois 60661

Re: 2011 Procurement System Review

Dear Mr. Clifford:

The Federal Transit Administration (FTA) is in receipt of Metra's latest response to the 2011 Procurement System Review (PSR) and our review of your responses has been completed. I wish to thank you and your staff for your patience during this process. By way of background, FTA conducted a PSR on Metra back in 2011 and a final report was issued dated July 1st of that year. Additionally, we asked our PSR consultant, Calyptus Consulting Group, Inc. (Calyptus) to review four contracts that generated a number of the findings from the 2011 PSR, which were Terry's Ford, LTK, Nippon Sharyo, and Engineering and Management Specialists, Inc. (EMS). The review of those contracts was to determine federal funding participation.

Contingent upon our receipt of a satisfactory response to the corrective actions and conditions stated in this letter below, the LTK, Nippon Sharyo and current EMS contracts remain eligible for Federal assistance. Metra may resume grant drawdown for these contracts, but must first provide evidence that the current EMS contract has been reconciled to account for the audited adjustment in overhead rates. However, due to recent developments that Metra has alerted our office to regarding the Terry's Ford contract, FTA will make a final determination of eligibility status at a later date.

Enclosed with this letter is our final follow up corrective actions from the 2011 PSR that Metra must address. In addition to providing a satisfactory response to the follow up actions, Metra must also:

- Provide FTA with a detailed organization chart of its purchasing department, with names, functions and areas of responsibility;
- Provide FTA with evidence that <u>all</u> Metra staff involved in its purchasing process has been trained in FTA procurement requirements;
- Provide FTA with evidence that Metra's procurement staff has received adequate procurement training commensurate to their level of responsibilities and are thoroughly knowledgeable of Metra's revised procurement policies and procedures;

- Provide FTA with evidence that Metra has put in place a process to review and validate on an on-going basis, contracts representing each method of procurement to assure compliance with Metra's policies and procedures, as well as FTA requirements.
- Provide FTA with evidence that an independent audit function is in place to ensure integrity of Metra's procurement actions.

FTA will continue to monitor Metra's progress in these efforts, inclusive of a follow up PSR to be scheduled in the future. Also, my staff will always be available to provide your staff with technical assistance throughout this process. Again I wish to thank you and your staff for your cooperation in this matter and please feel free to contact me if you have any questions.

Sincerely,

Marisol R. Simón
Regional Administrator

Metra
547 W. Jackson Blvd. Chicago, Illinois 60661 Telephone: 312-322-6900 TTY# 1-312-322-6774

September 15, 2010

Dominick Gatto, PE
Director, Office of Operations and Program Management
Federal Transit Administration, Region 5
200 West Adams Street, Suite 320
Chicago, IL 60606-5253

Dear Mr. Gatto:

The purpose of this letter is two-fold; first to notify you of a situation that has materialized with regard to a Metra contract with Engineering and Management Specialists, Inc. (EMS), a DBE firm, which was funded in part by the FTA; and second, to seek FTA consultation and advice on the disposition of the matter. The issue involves an overpayment of overhead expenses that took place under a prior contract with EMS. That firm is now performing the same services under a new contract. However, as discussed in the attached May 12, 2010 memorandum from Eric Fernandes, Metra and EMS have not reached an agreeable resolution of the issues surrounding the first contract, and therefore, Metra is seeking FTA assistance in resolving the issue.

Background

Metra has had a long-standing relationship with EMS, a DBE firm, who performs Quality Assurance (QA) oversight and general capital program support services. EMS has performed well under all contracts with Metra. They have two employees stationed at Metra on a permanent basis, fulfilling all the requirements of their jobs, as proposed in the RFP process. The two primary functions of the contract services are: (1) to provide QA oversight and audits; and (2) to prepare detailed reports utilized both on Metra's New Starts projects and other FTA capital grant reporting requirements.

Prior to Metra's contracts with EMS, we did not have a QA oversight program. In addition to performing QA audits, EMS has also been instrumental in helping Metra develop policies and procedures that enabled our Engineering and Mechanical departments to put together QA plans that were used internally, and then passed on to external design teams, project managers, and contractors. Additionally, EMS has worked with FTA Project Management Oversight Consulting staff to ensure that all 15 elements of the FTA policies and procedures for administering QA Programs are in place.

EMS has prepared reports for Metra's three recently-completed New Starts projects that were utilized by both the FTA and Metra staff in order to monitor and maintain the on-time completion of the projects, thereby providing everyone the details associated with every aspect of the three New Starts. In fact, the New Starts reports were instrumental in keeping everyone on task, and therefore, enabling Metra to complete all three New Starts on time and under budget. EMS has also been instrumental in preparing and documenting long-standing reporting processes, including the FTA quarterly reporting endeavors.

An important factor in the selection of EMS has been its willingness to abide by the terms of the RFP QA audit function that restricts the successful bidder from being the prime contractor on any other capital contract with Metra. Because of this restriction, a limited number of proposals are received when Metra issues solicitations for these services, as illustrated by the latest RFP. Many eligible firms simply do not want to forgo opportunities for other Metra business, as is required of the firm that takes on the QA audit responsibilities.

Audit

As part of our normal business practices, Metra's Audit Department performed an audit of the EMS contract for the years 2005-2008 in order to determine compliance with the provisions of contract K44456 (the first contract). The Audit department concluded that the actual overhead rate for those years resulted in an overpayment under K44456 in the amount of $463,398.87. Metra wants to stress that, while the overpayment under contract K44456 appears to be inconsistent with the terms of the contractual agreement, at no time during the audit or in any subsequent discussions with Metra's Audit Department was there any indication of incorrect billings to Metra for labor hours and rates. Based on EMS' cooperation both during and after the audit, it is Metra's opinion that the overpayment was a result of EMS' misunderstanding of the relevant terms of the agreement regarding the overhead rate application on billings.

Closing

As stated by EMS in the attached April 22, 2010 correspondence, they can not afford to pay back the amount identified in the audit. Because of this, further discussions are necessary to determine what would happen should Metra lose EMS as the provider of services. Metra may not be able to secure a comparable contractor within a reasonable time frame in order to continue those day-to-day aspects of the FTA's required QA audit and capital grant reporting processes that are currently handled by EMS on-location at Metra. Additionally, Metra would lose the history, expertise, and institutional knowledge base of EMS's staff, which have been with Metra for the past 8 years. Any replacement contractor would require a substantial amount of time to get up to speed on Metra's systems and processes, thereby extending the time frame under which Metra would be up and running with its QA and grant reporting functions. From a financial standpoint, EMS has been extremely moderate in their costs, even when applying the higher overhead rates. In fact, under the most recent RFP, there were three proposals and the closest in cost to EMS was over $1 million more, with the third proposal being in excess of $1.1 million more than the EMS proposal.

Metra is committed to working with the FTA to resolve this matter in a timely fashion to the satisfaction of all parties involved. Please feel free to contact Eric Fernandes at 312-322-6711 to initiate discussions on the overall situation and address any questions you may have.

Sincerely,

Jack A. Groner, PE
Senior Division Director
Capital & Strategic Planning

cc: Eric Fernandes

Metra[SM]

Memorandum

To: Jack Groner, Senior Division Director
Capital & Strategic Planning

May 12, 2010

From: Eric Fernandes, Director
Audit

Subject: Engineering and Management Specialists, Inc. (EMS)
Contract #s K44456 and K86876 – Overhead Rate Review
Quality Assurance Oversight and General Program Support Services

The Metra Audit department has now concluded the review of overhead rate computations for 2005 to 2008 based on the documentation and information provided by EMS on April 20th and 21st of 2010. Based on our review, we have determined that an overpayment of overhead expenses totaling $463,398.87 occurred on contract K44456, as detailed below.

Year	Provisional Overhead Rate Applied by EMS	Actual Overhead Rate per Audit Review	Overpayment of Overhead Amounts*
2005	110%	74.58%	$65,421.09
2006	110%	76.10%	$78,322.42
2007	110%	57.96%	$125,086.06
2008	110%	32.07%	$194,569.30
Total Amount of Overpayment			$463,398.87

*Includes 10% profit.

Although we have had several discussions with EMS regarding the provisional overhead rate applied by EMS and our actual review rates for years 2005 to 2008, these discussions produced no mutually agreeable resolution. EMS in their latest letter dated April 22, 2010 is requesting a waiver of overpayment that occurred on contract K44456 due to its financial condition, and has indicated that if Metra insists on reimbursement, EMS will find itself in an untenable condition. A copy of EMS letter dated April 22, 2010 is attached.

EMS contends among other things that their actual overhead rates for years 2005 to 2008 would have been higher than the EMS proposed rate of 110% applied on contract K44456 had the officers of the company taken appropriate salaries and insurance reimbursements. EMS also contends that, as a small Disadvantaged Business Enterprise (DBE) company, it would have had to borrow additional amounts at higher interest rates to pay appropriate salary and insurance reimbursement to officers in 2005 to 2008 because of the weak financial condition evidenced by

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the outstanding SBA and credit card loans. EMS provided their year-end un-audited balance sheets and tax returns for years 2004 through 2008 to support their contention.

Audit has conducted a limited review of EMS un-audited balance sheets and corporate tax returns for years 2004 to 2008, which appear to support EMS position regarding its SBA loan and credit card debts as well as the salaries taken by the officers. We found no evidence of health insurance reimbursements to officers for the years 2005 through 2008. However, we did note a shareholder distribution of $215,000 to one of the officers (shareholder) in 2008, but none in prior years (2004 through 2007). We also noted from its 2008 financials that: the SBA loan was paid off in 2008, credit card debts of $61,419.27 were outstanding as of 12/31/2008, cash was $8,369.07, and an amount of $81,224 was due to the company from the shareholder.

Our review of the balance sheet as of 12/31/2009 and the corporate tax return for 2009 indicate that: there was a shareholder distribution of $180,000 in 2009, there were no liquid assets and a payroll liability of $2,793.14 existed. In view of our findings, based on our limited review, it appears that the payment of $463,398.87 due Metra could not be made from company funds.

EMS is applying a provisional overhead rate of 75% as directed by Metra for billings on the current contract K86876 which commenced on January 1, 2009. EMS is in agreement to adjust the provisional rate of 75% to the actual overhead rate for the year 2009 and going forward as determined by Metra Audit. Audit has requested EMS to submit their 2009 overhead rate computation by May 31, 2010 for our review. It is our estimate that EMS would owe Metra approximately $100,000 for 2009 as the actual overhead rate would be about 35% instead of the provisional rate of 75% applied on 2009 billings. EMS indicated that it will reimburse Metra for the amount due on contract K86876 for 2009, once the review of overhead rate and billing adjustments is completed.

Based on current regulations, Metra cannot waive the overpayment of $463,398.87 that occurred on contract K44456 or adjust the actual overhead rates upward for appropriate salaries and insurance reimbursements that EMS indicated were not taken by the officers for 2005 through 2008. Accordingly, we are forwarding our review findings along with a copy of EMS letter to your office for disposition of this matter.

Audit recommends that your office formally notify the FTA that Metra and EMS have not reached an agreeable resolution on the overhead expenses due on contract K44456. Since EMS is a small certified DBE and their financial statements presented to us indicate there is a lack of cash to reimburse Metra without incurring loans, the FTA has the responsibility to either waive the amount of $463,398.87 due on contract K44456 or negotiate a lower amount considering the actual overhead rates for years 2005 to 2008 would have been higher as detailed by EMS. Audit further recommends that FTA should be notified to contact our office directly on this EMS issue for any resolution.

Please call me if you need further information.

EF/dh
Attachment: Copy of EMS letter dated April 22, 2010
cc: P. Kisielius R. Gold
T. Barnett M. Noland

Engineering & Management Specialists, Inc.
Consulting • Engineering • Quality Assurance
2100 Sanders Road, Suite 110
Northbrook, IL 60062

Tel: 847.564.4700
Fax: 847.564.4710
http://www.emsexcel.com

EMSL-10-1762

April 22, 2010

Mr. Eric Fernandes
Director of Audits
Metra
547 West Jackson Boulevard
Chicago, IL 60661

Subject: Audit of Engineering & Management Specialists, (EMS) Inc.
Contract No. K44456 and K86876 –Overhead Rate Review

Reference: Letter from E. Fernandes to Lia Georgopoulos, dated April 16, 2010

Dear Mr. Fernandes:

In response to your letter (Reference), I would like to bring to you attention the following facts:

EMS is a Small Business, certified by Metra as a DBE. As such, it is difficult to follow the Cost Accounting Standards (CAS) guidelines and calculate an accurate overhead rate. Moreover, when EMS was performing work for the City of Chicago, and the Capital Development Board of Illinois (2000-2006), it was offered a flat multiplier of 2.5 and 2.6 respectively without an audit. With that in mind, EMS proposed to Metra the overhead rate of 1.1 (multiplier 2.3) in 2005 and believed that this will hold for the life of the Contract. We regret that we did not anticipate that it could be revised. That is one of the reasons adequate records were not kept, and the EMS Management did not take salaries or insurance reimbursements, bonuses etc. Had we known, we would have probably taken our salaries. I say probably because the EMS financial situation was such that it would have had to borrow the funds from credit card companies, and pay high interest rates that it could not afford, in order to pay the President's and Vice President's salaries. As so many small business owners around the country do, EMS owners did not take their salary in order to keep their employees on the payroll, hoping for better days ahead. Back in 2005-2007, EMS had already an SBA loan, and could not obtain a regular bank loan. It had to borrow from credit card companies in order to cover operational expenses and payroll.

Had I taken my salary, and paid the Vice President an appropriate salary, and insurance reimbursement, the Overhead Rate to Metra would have been much higher than the Overhead Rate proposed by EMS.

We have provided documentation for our financial situation and it should be obvious that we can not afford to pay the amount that you have requested in your preliminary estimate. If you insist, EMS will find itself in an untenable situation.

I kindly request you to waive the preliminary amount estimated. We are in the process of computing the overhead rate for 2009 and we will submit that to you shortly. We will welcome audits of the most recent Contract K86876 every year and apply the computed overhead rate from now on.

I look forward to your favorable decision.

Sincerely,

L Georgopoulos

Lia Georgopoulos, Ph.D.
President

RECEIVED
APR 26 2010
METRA AUDIT DEPT.

Metra SM
547 W. Jackson Blvd. Chicago, Illinois 60661 Telephone: (312) 322-6900 TTY# 1-312-322-6774

June 15, 2011

Ms. Lia Georgopoulos, Ph.D.
Engineering & Management Specialists, Inc.
2100 Sanders Road, Suite 110
Northbrook, IL 60062

Subject: Overhead Rate Billing Adjustments – 2005 through 2008 - Contract # K44456

Dear Ms. Georgopoulos:

Audit has reviewed your billing adjustments totaling $449,004 stated in your letter dated May 26, 2011, for the above subject contract against our originally proposed $463,399 adjustment. Based on other information submitted, we have recomputed the amount due Metra to be $452,729 (attachment). This final amount was discussed with you and Mr. Georgopoulos for concurrence. By copy of this letter, we are advising Metra's Contracting Officer of this amount due Metra by Engineering and Management Specialists, Inc.

Please contact me at (312) 322-6711 if you have any questions on the final amount due Metra.

Sincerely,

Eric Fernandes
Director of Audit

EF/dh

Attachment: Schedule of Final Adjustment

cc: F. Smalarz
P. Kisielius
T. Barnett
D. Simmons
L. Ciavarella
T. Less
J. Thomas

H:\Diane\Letters\2011 Letters\EMS 6 15 11.doc

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Engineering & Management Specialists, Inc. (EMS)
Final Billing Adjustments - 2005 through 2008
Contract # K44456

Original Proposed Adjustment			$463,399
Less: Report Writing - Direct Charges			
	2005	(6,625)	
	2006	(8,750)	
	2007	(675)	
		(16,050)	(16,050)
Add: Adjustment Rate for Report Writing Removed from Numerator			
	2004	152	
	2005	1,972	
	2006	3,256	
		5,380	$5,380
Net Amount Due Metra			$452,729

Note: EMS proposed $449,004 in their letter dated May 26, 2011. EMS was advised of the revised net amount due Metra of $452,729 on June 15, 2011.

Maria Puisis-Massel

From:	Maria Puisis-Massel
Sent:	Wednesday, June 08, 2011 10:21 AM
To:	'Lia Georgopoulos'
Cc:	Aeric Fernades
Subject:	FW: EMS
Attachments:	EMS Adjustment Review 6 6 11.xls

Lia,

Please review the attached computation, and get back to me. My computation shows an amount due of $452,729. The reason being is that unless EMS can demonstrate from the accounting records that the report writing was subcontracted out and that the charges were passed onto Metra, or that the report writing reimbursements from Metra were already removed from the printing expenses in the numerator, the additive would have to be adjusted.

The schedules are attached for your review. If you have additional information, please submit for consideration. Thabnk you for your cooperation in this matter.

Maria Massel

EMS

Original Adjustment		$463,399
Adjustment Rate for Report Writing Removed from Numerator		
2005	1972	
2006	3256	
2004	152	
	5380	$5,380
Adjustment Amount		$468,779
Less Report Writing		
2005	(6,625)	
2006	(8,750)	
2007	(675)	
	(16,050)	(16,050)
		$452,729
Proposed EMS		(449,004)

2007 Labor Rates

Suresh Mehta

57.96%	57.38	33.26	9.06	99.70
57.89%	57.38	33.22	9.06	99.66
				0.04
		Total Hours		854
		Adjustment		$34.16

57.96%	59.50	34.49	9.40	103.39
57.89%	59.50	34.45	9.40	103.35
				0.04
		Total Hours		1,044
		Adjustment		$41.76

Jack Kelly

57.96%	55.17	31.98	8.71	95.86
57.89%	55.17	31.94	8.71	95.82
				0.04
		Total Hours		872
		Adjustment		$34.88

57.96%	57.00	33.04	9.00	99.04
57.89%	57.00	33.00	9.00	99.00
				0.04
		Total Hours		1,040
		Adjustment		$41.60

2007 Total Adjustment	$152.40

2006 Labor Rates

Suresh Mehta

76.10%	56	42.62	9.86	108.48
74.69%	56	41.83	9.78	107.61
				0.87
		Total Hours		1,907
		Adjustment		$1,659.09

Jack Kelly

76.10%	53	40.33	9.33	102.66
74.69%	53	39.59	9.26	101.85
				0.81
		Total Hours		1,948
		Adjustment		$1,577.88

2006 Total Adjustment	$3,236.97

2005 Labor Rates

Suresh Mehta

74.58%	56	41.76	9.78	107.54
73.50%	56	41.16	9.72	106.88
				0.66
		Total Hours		1,539
		Adjustment		$1,015.74

Jack Kelly

74.58%	53	39.53	9.25	101.78
73.50%	53	38.96	9.20	101.16
				0.62
		Total Hours		1,542
		Adjustment		956.04

2005 Total Adjustment $1,971.78

EMS Report Writing Adjustment

2005	$6,625
2006	$8,750
2007	$675

Adjustment to Additive Rates

2005	$458,346.53	($6,625)	$451,721.53
	$614,566.17		$614,566.17
	74.58%		73.50%
2006	$476,270.79	($8,750)	$467,520.79
	$625,869.19		$625,869.19
	76.10%		74.70%
2007	$624,499.18	($675)	$623,824.18
	$1,077,532.60		$1,077,532.60
	57.96%		57.89%

Actual Overhead Rates per Metra Audit Review

Engineering & Management Specialists, Inc (EMS)
Quality Assurance Oversight and General Program Support Services

Year	Actual Overhead Rate	Contract No.		
2005	73.50%	K44456	\	
2006	74.70%	K44456	\	Audited Adjustment for
2007	57.89%	K44456	/	2005-08 Overhead Rate
2008	32.07%	K44456	/	
2009	53.07%	K86876	\	
2010	78.92%	K86876	\	Audited Adjustment for
2011	103.779%	K86876	/	2009-11 Overhead Rate
2012 *	78.59%	K86876	/	

* Note: The Actual Overhead Rate for 2012 - the final year of the EMS Contract - is based on the average of the previous 3-year (2009-2011) Actual Overhead Rates.

Final Settlement of EMS Overhead Rates

Engineering & Management Specialists, Inc (EMS)

Quality Assurance Oversight and General Program Support Services

DV	P.E.	Invoice Date (YYMMDD)	Paid Date (YYMMDD)	Check #	Invoice Amount Before Adjustments	Audited Adjustments for 2005-8 Overhead Rates	Audited Adjustments for 2009-11 Overhead Rates	Adjusted Invoice Amount	Amount Paid	Amount Due to Metra/(EMS)
BH	3689	090202	090319	718713	$21,516.88	$0.00	($5,406.57)	$16,110.31	$21,516.88	$5,406.57
BH	3689	090202	090319	718713	$23,839.20	$0.00	($5,991.24)	$17,847.96	$23,839.20	$5,991.24
BH	3689	090302	090415	720241	$42,047.28	$0.00	($7,691.64)	$34,355.64	$42,047.28	$7,691.64
BH	3689	090331	090617	724201	$48,870.80	$0.00	($11,467.53)	$37,403.27	$48,870.80	$11,467.53
BH	3689	090505	090617	724201	$44,184.72	($12,381.17)	($6,368.93)	$25,434.62	$31,803.54	$6,368.92
BH	3689	090602	090720	726525	$38,748.93	$0.00	($5,585.40)	$33,163.53	$38,748.93	$5,585.39
BH	3689	090713	090805	727574	$38,575.80	$0.00	($5,560.44)	$33,015.36	$38,575.80	$5,560.44
BH	3689	090805	091006	731492	$41,880.95	$0.00	($6,036.85)	$35,844.10	$41,880.95	$6,036.85
EE/BH	3689	090902	091028	732860	$38,422.35	$0.00	($5,538.32)	$32,884.03	$38,422.35	$5,538.32
EE	3689	091008	091124	734743	$42,429.84	$0.00	($6,115.97)	$36,313.87	$42,429.84	$6,115.97
EE	3689	091102	091130	734974	$40,055.25	$0.00	($5,773.69)	$34,281.56	$40,055.25	$5,773.69
EE	3689	091202	091217	736209	$31,955.00	($8,373.70)	($4,004.42)	$19,576.88	$23,581.30	$4,004.42
EE	3689	100104	100223	739937	$39,732.00	$0.00	($4,978.99)	$34,753.01	$39,732.00	$4,978.99
EE	3689	100201	100405	742584	$35,287.18	$0.00	$790.43	$36,077.61	$35,287.18	($790.43)
EE	3689	100303	100405	742584	$37,576.00	$0.00	$841.70	$38,417.70	$37,576.00	($841.70)
EE	3689	100406	100701	748220	$45,691.80	$0.00	$1,023.50	$46,715.30	$45,691.80	($1,023.50)
EE	3689	100511	100701	748220	$41,044.85	$0.00	$919.40	$41,964.25	$41,044.85	($919.40)
EE	3689	100607	100812	750687	$33,368.84	($5,000.00)	$5,653.08	$34,021.92	$28,368.84	($5,653.07)
EE	3689	100707	100812	750687	$38,210.83	($5,000.00)	$6,473.37	$39,684.20	$33,210.83	($6,473.36)
EE	3689	100805	100909	752300	$35,326.17	($5,000.00)	$5,984.67	$36,310.84	$30,326.17	($5,984.67)
EE	3689	100921	101028	755402	$38,210.83	($5,000.00)	$6,473.37	$39,684.20	$33,210.83	($6,473.36)
EE	3689	101007	101028	755402	$32,279.94	($5,000.00)	$5,468.60	$32,748.54	$27,279.94	($5,468.60)
EE	3689	101108	101209	757890	$8,218.43	$0.00	($8,218.43)	$8,218.43	$8,218.43	$0.00
EP	3689	101108	101209	757890	$26,077.74	($5,000.00)	$14,028.61	$35,106.35	$29,296.17	($5,810.18)
EP	3689	101208	110104	759105	$30,617.14	($5,000.00)	$5,186.90	$30,804.04	$25,617.14	($5,186.90)
EP	3689	110104	110120	760141	$33,000.26	($5,000.00)	$5,590.64	$33,590.90	$28,000.26	($5,590.63)
EP	3689	110211	-	-	$34,737.12	($5,000.00)	$11,528.86	$41,265.98	$0.00	($41,265.98)
EP	3689	110310	-	-	$31,409.83	($5,000.00)	$10,424.57	$36,834.40	$0.00	($36,834.40)
EP	3689	110405	-	-	$38,062.73	($5,000.00)	$12,632.59	$45,695.32	$0.00	($45,695.32)
EP	3689	110503	-	-	$33,323.40	($5,000.00)	$11,059.67	$39,383.07	$0.00	($39,383.07)
EP	3689	110607	-	-	$30,967.20	($5,000.00)	$10,277.67	$36,244.87	$0.00	($36,244.87)
EP	3689	110712	-	-	$35,679.60	($5,000.00)	$11,841.66	$42,521.26	$0.00	($42,521.26)
EP	3689	110818	-	-	$34,702.05	($11,632.33)	$4,821.29	$27,891.01	$0.00	($27,891.01)
EP	3689	110818	-	-	$43,582.24	($11,632.34)	$6,055.06	$38,004.96	$0.00	($38,004.96)
EP	3689	111005	-	-	$42,515.52	($11,632.34)	$5,906.85	$36,790.03	$0.00	($36,790.03)
EP	3689	111101	-	-	$41,206.71	($11,632.34)	$5,725.02	$35,299.39	$0.00	($35,299.39)
EP	3689	111201	-	-	$38,591.07	($11,632.34)	$5,361.61	$32,320.34	$0.00	($32,320.34)
EP	3689	120103	-	-	$31,141.70	($11,632.34)	$4,326.65	$23,836.01	$0.00	($23,836.01)
					-	($292,180.10)	-	($292,180.10)	-	$292,180.10
					$1,363,088.18	($452,729.00)	$69,657.36	$988,234.97	$874,632.55	**($113,602.42)**
Final Settlement:										
EP	**3689**	**120413**	**120419**	**788376**	**$113,602.42**	**-**	**-**	**$113,602.42**	**$113,602.42**	**-**

547 W. Jackson Blvd. Chicago, IL 60661 (312) 322-6900 TTY# 1-312-322-6774

July 30, 2012

Mr. Dominick J. Gatto, PE
Director, Office of Program Management and Oversight
Federal Transit Administration, Region V
200 West Adams Street, Suite 320
Chicago, Illinois 60606-2789

Attn: Melody Hopson

Re: Metra Response to FTA
Procurement System Review Letter

Dear Mr. Gatto:

Attached please find Metra's first response to the June 15th letter which requested certain information about Metra's progress in implementing promised improvements to correct deficiencies discovered in the 2011 Procurement System Review (PSR). This response contains all information requested by July 30th, except those items identified in our July 23rd extension request, detailed below. Under separate cover, Metra is concurrently transmitting our response regarding the EMS contract, as requested in your June 15th letter.

In the body of the July 15th letter, five items were requested, set off by bullet points. Attached with this transmittal are replies to the first four: 1) a detailed organization chart for the Procurement Department; 2) evidence that all involved in the purchasing process have received training; 3) evidence that the Procurement staff in particular has received adequate training; and 4) evidence of a process to review and validate contracts on an on-going basis. The final bullet point, evidence of a fully-developed procurement audit oversight function, will be submitted by October 31st, consistent with the deadline for detailing the independent evaluation process for action item implementation noted in Category 3 of Attachment 1 of your June 15, 2012 letter.

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Regarding follow-up actions for the twenty open findings, Attachment 1 to your letter requests three categories of response, two due by July 30th, and one by October 31st. The response to Category 1, requesting a training schedule for all twenty open findings, is attached. Category 2 requests a milestone schedule for coming into compliance for seven of the open findings. Attached is our response to action items 6, 19, 37, and 39. Metra's July 23rd letter to FTA requested extension from the July 30th deadline to September 30th for action items 2, 5, and 48, due to their complexity. Finally, Metra intends to supply the third category response, an independent procurement action evaluation plan for all open items, by the requested October 31st deadline. A summary of Metra's responses is attached.

If you require any additional information regarding our requested extension, please contact me at (312) 322-6639.

Sincerely,

Lawrence Bubel

Lawrence Bubel
Senior Director
Grant Management and Accounting

cc: T. Barnett
J. Milano
T. Farmer
R. Capra
P. Kisielius
G. Urban
C. Gamboa
D. Simmons

Metra
The way to really fly
547 W. Jackson Blvd. Chicago, IL 60661 (312) 322-6900 TTY# 1-312-322-6774

July 30, 2012

Mr. Dominick J. Gatto, PE
Director, Office of Program Management and Oversight
Federal Transit Administration, Region V
200 West Adams Street, Suite 320
Chicago, Illinois 60606-2789

Attn: Melody Hopson

Re: EMS Contract Reconciliation

Dear Mr. Gatto:

Marisol Simón's June 15th letter to Alex Clifford (Attachment 1) requested Metra to provide evidence that we have reconciled the EMS contract to account for audited adjustments in the overhead rates. Contingent upon satisfactory response to the requested corrective actions, the current EMS contract remains eligible for FTA participation. Below is a brief description of our efforts to resolve this issue.

On September 15, 2010, Metra informed FTA via letter (Attachment 2) that we discovered an estimated overpayment to EMS of $463,398.87 under their 2005-2008 contract due to using the provisional overhead rate throughout the period. In response, FTA suspended reimbursement for expenses incurred against EMS activities and Metra withheld payment of EMS invoices, pending resolution. Close examination of the audited financial rates from 2005-2008 yielded a revised estimate of the amount owed Metra of $452,729.00, as documented in Attachment 3. The audited overhead rates used in this determination are shown in Attachment 4. Adjustments to invoices from 2009-11 are shown in Attachment 5, using rates from Attachment 4. The net difference between what was paid, $874,632.55, and what was owed, $988,234.97 (including withheld payments and recalculated overhead costs), was $113,602.42 due to EMS. On April 19, 2012, Metra provided a check to EMS in this amount.

Metra's payment to EMS resolves the payment irregularity first discovered in 2010, and clears the way for EMS to perform and be reimbursed for the final months of their current contract, due to expire in October of this year. If FTA finds this documentation acceptable, we will resume charging and seeking reimbursement from an FTA grant. If you require any additional information regarding this matter, please contact me at (312) 322-6639.

Sincerely,

Lawrence Bubel

Lawrence Bubel
Senior Director
Grant Management and Accounting

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06-20-12P02:50 RCVD

U.S. Department
of Transportation
Federal Transit Administration

REGION V
Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 320
Chicago, IL 60606-5232
312-353-2789
312-886-0351 (fax)

June 15, 2012

Mr. Alexander Clifford
Executive Director and CEO
Metra
547 West Jackson Blvd.
Chicago, Illinois 60661

Re: 2011 Procurement System Review

Dear Mr. Clifford:

The Federal Transit Administration (FTA) is in receipt of Metra's latest response to the 2011 Procurement System Review (PSR) and our review of your responses has been completed. I wish to thank you and your staff for your patience during this process. By way of background, FTA conducted a PSR on Metra back in 2011 and a final report was issued dated July 1st of that year. Additionally, we asked our PSR consultant, Calyptus Consulting Group, Inc. (Calyptus) to review four contracts that generated a number of the findings from the 2011 PSR, which were Terry's Ford, LTK, Nippon Sharyo, and Engineering and Management Specialists, Inc. (EMS). The review of those contracts was to determine federal funding participation.

Contingent upon our receipt of a satisfactory response to the corrective actions and conditions stated in this letter below, the LTK, Nippon Sharyo and current EMS contracts remain eligible for Federal assistance. Metra may resume grant drawdown for these contracts, but must first provide evidence that the current EMS contract has been reconciled to account for the audited adjustment in overhead rates. However, due to recent developments that Metra has alerted our office to regarding the Terry's Ford contract, FTA will make a final determination of eligibility status at a later date.

Enclosed with this letter is our final follow up corrective actions from the 2011 PSR that Metra must address. In addition to providing a satisfactory response to the follow up actions, Metra must also:

- Provide FTA with a detailed organization chart of its purchasing department, with names, functions and areas of responsibility;
- Provide FTA with evidence that <u>all</u> Metra staff involved in its purchasing process has been trained in FTA procurement requirements;
- Provide FTA with evidence that Metra's procurement staff has received adequate procurement training commensurate to their level of responsibilities and are thoroughly knowledgeable of Metra's revised procurement policies and procedures;

- Provide FTA with evidence that Metra has put in place a process to review and validate on an on-going basis, contracts representing each method of procurement to assure compliance with Metra's policies and procedures, as well as FTA requirements.
- Provide FTA with evidence that an independent audit function is in place to ensure integrity of Metra's procurement actions.

FTA will continue to monitor Metra's progress in these efforts, inclusive of a follow up PSR to be scheduled in the future. Also, my staff will always be available to provide your staff with technical assistance throughout this process. Again I wish to thank you and your staff for your cooperation in this matter and please feel free to contact me if you have any questions.

Sincerely,

Marisol R. Simón
Regional Administrator

Metra
547 W. Jackson Blvd. Chicago, Illinois 60661 Telephone: 312-322-6900 TTY# 1-312-322-6774

September 15, 2010

Dominick Gatto, PE
Director, Office of Operations and Program Management
Federal Transit Administration, Region 5
200 West Adams Street, Suite 320
Chicago, IL 60606-5253

Dear Mr. Gatto:

The purpose of this letter is two-fold; first to notify you of a situation that has materialized with regard to a Metra contract with Engineering and Management Specialists, Inc. (EMS), a DBE firm, which was funded in part by the FTA; and second, to seek FTA consultation and advice on the disposition of the matter. The issue involves an overpayment of overhead expenses that took place under a prior contract with EMS. That firm is now performing the same services under a new contract. However, as discussed in the attached May 12, 2010 memorandum from Eric Fernandes, Metra and EMS have not reached an agreeable resolution of the issues surrounding the first contract, and therefore, Metra is seeking FTA assistance in resolving the issue.

Background

Metra has had a long-standing relationship with EMS, a DBE firm, who performs Quality Assurance (QA) oversight and general capital program support services. EMS has performed well under all contracts with Metra. They have two employees stationed at Metra on a permanent basis, fulfilling all the requirements of their jobs, as proposed in the RFP process. The two primary functions of the contract services are: (1) to provide QA oversight and audits; and (2) to prepare detailed reports utilized both on Metra's New Starts projects and other FTA capital grant reporting requirements.

Prior to Metra's contracts with EMS, we did not have a QA oversight program. In addition to performing QA audits, EMS has also been instrumental in helping Metra develop policies and procedures that enabled our Engineering and Mechanical departments to put together QA plans that were used internally, and then passed on to external design teams, project managers, and contractors. Additionally, EMS has worked with FTA Project Management Oversight Consulting staff to ensure that all 15 elements of the FTA policies and procedures for administering QA Programs are in place.

EMS has prepared reports for Metra's three recently-completed New Starts projects that were utilized by both the FTA and Metra staff in order to monitor and maintain the on-time completion of the projects, thereby providing everyone the details associated with every aspect of the three New Starts. In fact, the New Starts reports were instrumental in keeping everyone on task, and therefore, enabling Metra to complete all three New Starts on time and under budget. EMS has also been instrumental in preparing and documenting long-standing reporting processes, including the FTA quarterly reporting endeavors.

An important factor in the selection of EMS has been its willingness to abide by the terms of the RFP QA audit function that restricts the successful bidder from being the prime contractor on any other capital contract with Metra. Because of this restriction, a limited number of proposals are received when Metra issues solicitations for these services, as illustrated by the latest RFP. Many eligible firms simply do not want to forgo opportunities for other Metra business, as is required of the firm that takes on the QA audit responsibilities.

Audit

As part of our normal business practices, Metra's Audit Department performed an audit of the EMS contract for the years 2005-2008 in order to determine compliance with the provisions of contract K44456 (the first contract). The Audit department concluded that the actual overhead rate for those years resulted in an overpayment under K44456 in the amount of $463,398.87. Metra wants to stress that, while the overpayment under contract K44456 appears to be inconsistent with the terms of the contractual agreement, at no time during the audit or in any subsequent discussions with Metra's Audit Department was there any indication of incorrect billings to Metra for labor hours and rates. Based on EMS' cooperation both during and after the audit, it is Metra's opinion that the overpayment was a result of EMS' misunderstanding of the relevant terms of the agreement regarding the overhead rate application on billings.

Closing

As stated by EMS in the attached April 22, 2010 correspondence, they can not afford to pay back the amount identified in the audit. Because of this, further discussions are necessary to determine what would happen should Metra lose EMS as the provider of services. Metra may not be able to secure a comparable contractor within a reasonable time frame in order to continue those day-to-day aspects of the FTA's required QA audit and capital grant reporting processes that are currently handled by EMS on-location at Metra. Additionally, Metra would lose the history, expertise, and institutional knowledge base of EMS's staff, which have been with Metra for the past 8 years. Any replacement contractor would require a substantial amount of time to get up to speed on Metra's systems and processes, thereby extending the time frame under which Metra would be up and running with its QA and grant reporting functions. From a financial standpoint, EMS has been extremely moderate in their costs, even when applying the higher overhead rates. In fact, under the most recent RFP, there were three proposals and the closest in cost to EMS was over $1 million more, with the third proposal being in excess of $1.1 million more than the EMS proposal.

Metra is committed to working with the FTA to resolve this matter in a timely fashion to the satisfaction of all parties involved. Please feel free to contact Eric Fernandes at 312-322-6711 to initiate discussions on the overall situation and address any questions you may have.

Sincerely,

Jack A. Groner, PE
Senior Division Director
Capital & Strategic Planning

cc: Eric Fernandes

Metra[SM]

Memorandum

To: Jack Groner, Senior Division Director
Capital & Strategic Planning

May 12, 2010

From: Eric Fernandes, Director
Audit

Subject: Engineering and Management Specialists, Inc. (EMS)
Contract #s K44456 and K86876 – Overhead Rate Review
Quality Assurance Oversight and General Program Support Services

The Metra Audit department has now concluded the review of overhead rate computations for 2005 to 2008 based on the documentation and information provided by EMS on April 20th and 21st of 2010. Based on our review, we have determined that an overpayment of overhead expenses totaling $463,398.87 occurred on contract K44456, as detailed below.

Year	Provisional Overhead Rate Applied by EMS	Actual Overhead Rate per Audit Review	Overpayment of Overhead Amounts*
2005	110%	74.58%	$65,421.09
2006	110%	76.10%	$78,322.42
2007	110%	57.96%	$125,086.06
2008	110%	32.07%	$194,569.30
Total Amount of Overpayment			$463,398.87

*Includes 10% profit.

Although we have had several discussions with EMS regarding the provisional overhead rate applied by EMS and our actual review rates for years 2005 to 2008, these discussions produced no mutually agreeable resolution. EMS in their latest letter dated April 22, 2010 is requesting a waiver of overpayment that occurred on contract K44456 due to its financial condition, and has indicated that if Metra insists on reimbursement, EMS will find itself in an untenable condition. A copy of EMS letter dated April 22, 2010 is attached.

EMS contends among other things that their actual overhead rates for years 2005 to 2008 would have been higher than the EMS proposed rate of 110% applied on contract K44456 had the officers of the company taken appropriate salaries and insurance reimbursements. EMS also contends that, as a small Disadvantaged Business Enterprise (DBE) company, it would have had to borrow additional amounts at higher interest rates to pay appropriate salary and insurance reimbursement to officers in 2005 to 2008 because of the weak financial condition evidenced by

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the outstanding SBA and credit card loans. EMS provided their year-end un-audited balance sheets and tax returns for years 2004 through 2008 to support their contention.

Audit has conducted a limited review of EMS un-audited balance sheets and corporate tax returns for years 2004 to 2008, which appear to support EMS position regarding its SBA loan and credit card debts as well as the salaries taken by the officers. We found no evidence of health insurance reimbursements to officers for the years 2005 through 2008. However, we did note a shareholder distribution of $215,000 to one of the officers (shareholder) in 2008, but none in prior years (2004 through 2007). We also noted from its 2008 financials that: the SBA loan was paid off in 2008, credit card debts of $61,419.27 were outstanding as of 12/31/2008, cash was $8,369.07, and an amount of $81,224 was due to the company from the shareholder.

Our review of the balance sheet as of 12/31/2009 and the corporate tax return for 2009 indicate that: there was a shareholder distribution of $180,000 in 2009, there were no liquid assets and a payroll liability of $2,793.14 existed. In view of our findings, based on our limited review, it appears that the payment of $463,398.87 due Metra could not be made from company funds.

EMS is applying a provisional overhead rate of 75% as directed by Metra for billings on the current contract K86876 which commenced on January 1, 2009. EMS is in agreement to adjust the provisional rate of 75% to the actual overhead rate for the year 2009 and going forward as determined by Metra Audit. Audit has requested EMS to submit their 2009 overhead rate computation by May 31, 2010 for our review. It is our estimate that EMS would owe Metra approximately $100,000 for 2009 as the actual overhead rate would be about 35% instead of the provisional rate of 75% applied on 2009 billings. EMS indicated that it will reimburse Metra for the amount due on contract K86876 for 2009, once the review of overhead rate and billing adjustments is completed.

Based on current regulations, Metra cannot waive the overpayment of $463,398.87 that occurred on contract K44456 or adjust the actual overhead rates upward for appropriate salaries and insurance reimbursements that EMS indicated were not taken by the officers for 2005 through 2008. Accordingly, we are forwarding our review findings along with a copy of EMS letter to your office for disposition of this matter.

Audit recommends that your office formally notify the FTA that Metra and EMS have not reached an agreeable resolution on the overhead expenses due on contract K44456. Since EMS is a small certified DBE and their financial statements presented to us indicate there is a lack of cash to reimburse Metra without incurring loans, the FTA has the responsibility to either waive the amount of $463,398.87 due on contract K44456 or negotiate a lower amount considering the actual overhead rates for years 2005 to 2008 would have been higher as detailed by EMS. Audit further recommends that FTA should be notified to contact our office directly on this EMS issue for any resolution.

Please call me if you need further information.

EF/dh
Attachment: Copy of EMS letter dated April 22, 2010
cc: P. Kisielius R. Gold
T. Barnett M. Noland

Engineering & Management Specialists, Inc.
Consulting • Engineering • Quality Assurance
2100 Sanders Road, Suite 110
Northbrook, IL 60062

Tel: 847.564.4700
Fax: 847.564.4710
http://www.emsexcel.com

EMSL-10-1762

April 22, 2010

Mr. Eric Fernandes
Director of Audits
Metra
547 West Jackson Boulevard
Chicago, IL 60661

Subject: Audit of Engineering & Management Specialists, (EMS) Inc.
Contract No. K44456 and K86876 –Overhead Rate Review

Reference: Letter from E. Fernandes to Lia Georgopoulos, dated April 16, 2010

Dear Mr. Fernandes:

In response to your letter (Reference), I would like to bring to you attention the following facts:

EMS is a Small Business, certified by Metra as a DBE. As such, it is difficult to follow the Cost Accounting Standards (CAS) guidelines and calculate an accurate overhead rate. Moreover, when EMS was performing work for the City of Chicago, and the Capital Development Board of Illinois (2000-2006), it was offered a flat multiplier of 2.5 and 2.6 respectively without an audit. With that in mind, EMS proposed to Metra the overhead rate of 1.1 (multiplier 2.3) in 2005 and believed that this will hold for the life of the Contract. We regret that we did not anticipate that it could be revised. That is one of the reasons adequate records were not kept, and the EMS Management did not take salaries or insurance reimbursements, bonuses etc. Had we known, we would have probably taken our salaries. I say probably because the EMS financial situation was such that it would have had to borrow the funds from credit card companies, and pay high interest rates that it could not afford, in order to pay the President's and Vice President's salaries. As so many small business owners around the country do, EMS owners did not take their salary in order to keep their employees on the payroll, hoping for better days ahead. Back in 2005-2007, EMS had already an SBA loan, and could not obtain a regular bank loan. It had to borrow from credit card companies in order to cover operational expenses and payroll.

Had I taken my salary, and paid the Vice President an appropriate salary, and insurance reimbursement, the Overhead Rate to Metra would have been much higher than the Overhead Rate proposed by EMS.

We have provided documentation for our financial situation and it should be obvious that we can not afford to pay the amount that you have requested in your preliminary estimate. If you insist, EMS will find itself in an untenable situation.

I kindly request you to waive the preliminary amount estimated. We are in the process of computing the overhead rate for 2009 and we will submit that to you shortly. We will welcome audits of the most recent Contract K86876 every year and apply the computed overhead rate from now on.

I look forward to your favorable decision.

Sincerely,

L Georgopoulos

Lia Georgopoulos, Ph.D.
President

RECEIVED
APR 26 2010
METRA AUDIT DEPT.

Metra SM
547 W. Jackson Blvd. Chicago, Illinois 60661 Telephone: (312) 322-6900 TTY# 1-312-322-6774

June 15, 2011

Ms. Lia Georgopoulos, Ph.D.
Engineering & Management Specialists, Inc.
2100 Sanders Road, Suite 110
Northbrook, IL 60062

Subject: Overhead Rate Billing Adjustments – 2005 through 2008 - Contract # K44456

Dear Ms. Georgopoulos:

Audit has reviewed your billing adjustments totaling $449,004 stated in your letter dated May 26, 2011, for the above subject contract against our originally proposed $463,399 adjustment. Based on other information submitted, we have recomputed the amount due Metra to be $452,729 (attachment). This final amount was discussed with you and Mr. Georgopoulos for concurrence. By copy of this letter, we are advising Metra's Contracting Officer of this amount due Metra by Engineering and Management Specialists, Inc.

Please contact me at (312) 322-6711 if you have any questions on the final amount due Metra.

Sincerely,

Eric Fernandes
Director of Audit

EF/dh

Attachment: Schedule of Final Adjustment

cc: F. Smalarz
P. Kisielius
T. Barnett
D. Simmons
L. Ciavarella
T. Less
J. Thomas

H:\Diane\Letters\2011 Letters\EMS 6 15 11.doc

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Engineering & Management Specialists, Inc. (EMS)
Final Billing Adjustments - 2005 through 2008
Contract # K44456

Original Proposed Adjustment			$463,399
Less: Report Writing - Direct Charges			
	2005	(6,625)	
	2006	(8,750)	
	2007	(675)	
		(16,050)	(16,050)
Add: Adjustment Rate for Report Writing Removed from Numerator			
	2004	152	
	2005	1,972	
	2006	3,256	
		5,380	$5,380
Net Amount Due Metra			$452,729

Note: EMS proposed $449,004 in their letter dated May 26, 2011. EMS was advised of the revised net amount due Metra of $452,729 on June 15, 2011.

Maria Puisis-Massel

From:	Maria Puisis-Massel
Sent:	Wednesday, June 08, 2011 10:21 AM
To:	'Lia Georgopoulos'
Cc:	Aeric Fernades
Subject:	FW: EMS
Attachments:	EMS Adjustment Review 6 6 11.xls

Lia,

Please review the attached computation, and get back to me. My computation shows an amount due of $452,729. The reason being is that unless EMS can demonstrate from the accounting records that the report writing was subcontracted out and that the charges were passed onto Metra, or that the report writing reimbursements from Metra were already removed from the printing expenses in the numerator, the additive would have to be adjusted.

The schedules are attached for your review. If you have additional information, please submit for consideration. Thabnk you for your cooperation in this matter.

Maria Massel

EMS

Original Adjustment		$463,399
Adjustment Rate for Report Writing Removed from Numerator		
2005	1972	
2006	3256	
2004	152	
	5380	$5,380
Adjustment Amount		$468,779
Less Report Writing		
2005	(6,625)	
2006	(8,750)	
2007	(675)	
	(16,050)	(16,050)
		$452,729
Proposed EMS		(449,004)

2007 Labor Rates

Suresh Mehta

57.96%	57.38	33.26	9.06	99.70
57.89%	57.38	33.22	9.06	99.66
				0.04
		Total Hours		854
		Adjustment		$34.16

57.96%	59.50	34.49	9.40	103.39
57.89%	59.50	34.45	9.40	103.35
				0.04
		Total Hours		1,044
		Adjustment		$41.76

Jack Kelly

57.96%	55.17	31.98	8.71	95.86
57.89%	55.17	31.94	8.71	95.82
				0.04
		Total Hours		872
		Adjustment		$34.88

57.96%	57.00	33.04	9.00	99.04
57.89%	57.00	33.00	9.00	99.00
				0.04
		Total Hours		1,040
		Adjustment		$41.60

2007 Total Adjustment	$152.40

2006 Labor Rates

Suresh Mehta

76.10%	56	42.62	9.86	108.48
74.69%	56	41.83	9.78	107.61
				0.87
		Total Hours		1,907
		Adjustment		$1,659.09

Jack Kelly

76.10%	53	40.33	9.33	102.66
74.69%	53	39.59	9.26	101.85
				0.81
		Total Hours		1,948
		Adjustment		$1,577.88

2006 Total Adjustment	$3,236.97

2005 Labor Rates

Suresh Mehta

74.58%	56	41.76	9.78	107.54
73.50%	56	41.16	9.72	106.88
				0.66
		Total Hours		1,539
		Adjustment		$1,015.74

Jack Kelly

74.58%	53	39.53	9.25	101.78
73.50%	53	38.96	9.20	101.16
				0.62
		Total Hours		1,542
		Adjustment		956.04

2005 Total Adjustment $1,971.78

EMS Report Writing Adjustment

2005	$6,625
2006	$8,750
2007	$675

Adjustment to Additive Rates

2005	$458,346.53	($6,625)	$451,721.53
	$614,566.17		$614,566.17
	74.58%		73.50%
2006	$476,270.79	($8,750)	$467,520.79
	$625,869.19		$625,869.19
	76.10%		74.70%
2007	$624,499.18	($675)	$623,824.18
	$1,077,532.60		$1,077,532.60
	57.96%		57.89%

Actual Overhead Rates per Metra Audit Review

Engineering & Management Specialists, Inc (EMS)
Quality Assurance Oversight and General Program Support Services

Year	Actual Overhead Rate	Contract No.		
2005	73.50%	K44456	\	
2006	74.70%	K44456	\	Audited Adjustment for
2007	57.89%	K44456	/	2005-08 Overhead Rate
2008	32.07%	K44456	/	
2009	53.07%	K86876	\	
2010	78.92%	K86876	\	Audited Adjustment for
2011	103.779%	K86876	/	2009-11 Overhead Rate
2012 *	78.59%	K86876	/	

* Note: The Actual Overhead Rate for 2012 - the final year of the EMS Contract - is based on the average of the previous 3-year (2009-2011) Actual Overhead Rates.

Final Settlement of EMS Overhead Rates

Engineering & Management Specialists, Inc (EMS)

Quality Assurance Oversight and General Program Support Services

DV	P.E.	Invoice Date (YYMMDD)	Paid Date (YYMMDD)	Check #	Invoice Amount Before Adjustments	Audited Adjustments for 2005-8 Overhead Rates	Audited Adjustments for 2009-11 Overhead Rates	Adjusted Invoice Amount	Amount Paid	Amount Due to Metra/(EMS)
BH	3689	090202	090319	718713	$21,516.88	$0.00	($5,406.57)	$16,110.31	$21,516.88	$5,406.57
BH	3689	090202	090319	718713	$23,839.20	$0.00	($5,991.24)	$17,847.96	$23,839.20	$5,991.24
BH	3689	090302	090415	720241	$42,047.28	$0.00	($7,691.64)	$34,355.64	$42,047.28	$7,691.64
BH	3689	090331	090617	724201	$48,870.80	$0.00	($11,467.53)	$37,403.27	$48,870.80	$11,467.53
BH	3689	090505	090617	724201	$44,184.72	($12,381.17)	($6,368.93)	$25,434.62	$31,803.54	$6,368.92
BH	3689	090602	090720	726525	$38,748.93	$0.00	($5,585.40)	$33,163.53	$38,748.93	$5,585.39
BH	3689	090713	090805	727574	$38,575.80	$0.00	($5,560.44)	$33,015.36	$38,575.80	$5,560.44
BH	3689	090805	091006	731492	$41,880.95	$0.00	($6,036.85)	$35,844.10	$41,880.95	$6,036.85
EE/BH	3689	090902	091028	732860	$38,422.35	$0.00	($5,538.32)	$32,884.03	$38,422.35	$5,538.32
EE	3689	091008	091124	734743	$42,429.84	$0.00	($6,115.97)	$36,313.87	$42,429.84	$6,115.97
EE	3689	091102	091130	734974	$40,055.25	$0.00	($5,773.69)	$34,281.56	$40,055.25	$5,773.69
EE	3689	091202	091217	736209	$31,955.00	($8,373.70)	($4,004.42)	$19,576.88	$23,581.30	$4,004.42
EE	3689	100104	100223	739937	$39,732.00	$0.00	($4,978.99)	$34,753.01	$39,732.00	$4,978.99
EE	3689	100201	100405	742584	$35,287.18	$0.00	$790.43	$36,077.61	$35,287.18	($790.43)
EE	3689	100303	100405	742584	$37,576.00	$0.00	$841.70	$38,417.70	$37,576.00	($841.70)
EE	3689	100406	100701	748220	$45,691.80	$0.00	$1,023.50	$46,715.30	$45,691.80	($1,023.50)
EE	3689	100511	100701	748220	$41,044.85	$0.00	$919.40	$41,964.25	$41,044.85	($919.40)
EE	3689	100607	100812	750687	$33,368.84	($5,000.00)	$5,653.08	$34,021.92	$28,368.84	($5,653.07)
EE	3689	100707	100812	750687	$38,210.83	($5,000.00)	$6,473.37	$39,684.20	$33,210.83	($6,473.36)
EE	3689	100805	100909	752300	$35,326.17	($5,000.00)	$5,984.67	$36,310.84	$30,326.17	($5,984.67)
EE	3689	100921	101028	755402	$38,210.83	($5,000.00)	$6,473.37	$39,684.20	$33,210.83	($6,473.36)
EE	3689	101007	101028	755402	$32,279.94	($5,000.00)	$5,468.60	$32,748.54	$27,279.94	($5,468.60)
EE	3689	101108	101209	757890	$8,218.43	$0.00	($8,218.43)	$8,218.43	$8,218.43	$0.00
EP	3689	101108	101209	757890	$26,077.74	($5,000.00)	$14,028.61	$35,106.35	$29,296.17	($5,810.18)
EP	3689	101208	110104	759105	$30,617.14	($5,000.00)	$5,186.90	$30,804.04	$25,617.14	($5,186.90)
EP	3689	110104	110120	760141	$33,000.26	($5,000.00)	$5,590.64	$33,590.90	$28,000.26	($5,590.63)
EP	3689	110211	-	-	$34,737.12	($5,000.00)	$11,528.86	$41,265.98	$0.00	($41,265.98)
EP	3689	110310	-	-	$31,409.83	($5,000.00)	$10,424.57	$36,834.40	$0.00	($36,834.40)
EP	3689	110405	-	-	$38,062.73	($5,000.00)	$12,632.59	$45,695.32	$0.00	($45,695.32)
EP	3689	110503	-	-	$33,323.40	($5,000.00)	$11,059.67	$39,383.07	$0.00	($39,383.07)
EP	3689	110607	-	-	$30,967.20	($5,000.00)	$10,277.67	$36,244.87	$0.00	($36,244.87)
EP	3689	110712	-	-	$35,679.60	($5,000.00)	$11,841.66	$42,521.26	$0.00	($42,521.26)
EP	3689	110818	-	-	$34,702.05	($11,632.33)	$4,821.29	$27,891.01	$0.00	($27,891.01)
EP	3689	110818	-	-	$43,582.24	($11,632.34)	$6,055.06	$38,004.96	$0.00	($38,004.96)
EP	3689	111005	-	-	$42,515.52	($11,632.34)	$5,906.85	$36,790.03	$0.00	($36,790.03)
EP	3689	111101	-	-	$41,206.71	($11,632.34)	$5,725.02	$35,299.39	$0.00	($35,299.39)
EP	3689	111201	-	-	$38,591.07	($11,632.34)	$5,361.61	$32,320.34	$0.00	($32,320.34)
EP	3689	120103	-	-	$31,141.70	($11,632.34)	$4,326.65	$23,836.01	$0.00	($23,836.01)
					-	($292,180.10)	-	($292,180.10)	-	$292,180.10
					$1,363,088.18	($452,729.00)	$69,657.36	$988,234.97	$874,632.55	**($113,602.42)**
Final Settlement:										
EP	**3689**	**120413**	**120419**	**788376**	**$113,602.42**	**-**	**-**	**$113,602.42**	**$113,602.42**	**-**

Metra 2011 Procurement System Review Response July 30, 2012

Category 1
Metra shall provide by July 30, 2012, a schedule for procurement training to FTA as a condition for accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Category 2
Metra shall provide by July 30, 2012, a milestone schedule of all procurement actions to come into compliance with FTA requirements as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA

Category 3
Metra shall provide by October 31, 2012 as to how it will conduct an objective and independent evaluation to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition for accepting the corrective action and to close the finding. Metra shall provide written evidence of its plan to FTA.

Summary Follow Up Actions (FINAL) - Open Findings

		Follow Up Action Category Submitted by			
		1	2	2	3
	Metra 2011 PSR System-wide Elements - Open Findings	**July 30th**	**July 30th**	**Sept. 30th**	**Oct. 31st**
1	2 - Contract Administration System	•		•	•
2	5 - Procedures of Ensuring Most Efficient and Economic Purchase	•		•	•
3	6 - Procurement Policies and Procedures	•	•		•
4	7 - Independent Cost Estimate	•			•
5	12 - Arbitrary Action	•			•
6	13 - Brand Name Restrictions	•			•
7	15 - Contract Term Limitation	•			•
8	16 - Written Procurement Selection Procedures	•			•
9	18 - Award to Responsible Contractors	•			•
10	19 - Sound and Complete Agreement	•	•		•
11	24 - Clear, Accurate, and Complete Specification	•			•
12	25 - Adequate Competition - Two or More Competitors	•			•
13	36 - Evaluation {RFP}	•			•
14	37 - Price and Other Factors {RFP}	•	•		•
15	39 - Cost Analysis Required {Sole Source}	•	•		•
16	41 - Cost or Price Analysis	•			•
17	42 - Written Record of Procurement History	•			•
18	46 - Progress Payments	•			•
19	48 - Cost Plus Percentage of Cost	•		•	•
20	56 - Clauses	•			•

Bullet Point #1

Provide FTA with a detailed organization chart of its purchasing department, with names, functions and areas of responsibility.

Organization Chart – Materials Management (see attached Organization Chart)

The Materials Management Department is divided into three (3) Divisions; Procurement, Professional Services/Contracts and the Materials Division.

The Procurement Division is responsible for procuring the material (goods) requirements for all of Metra whether utilizing operating, State or Federal funds.

The Professional Services/Contracts Division is responsible for procuring the professional services requirements for all of Metra whether utilizing operating, State or Federal funds.

The Materials Division is responsible for overseeing and managing the material requirements for Metra through the material inventory system and the operation of Metra's four (4) storehouses.

PLEASE NOTE:

• The Senior Director, Materials Management position, due to the prior individual retiring, has been filled by a person that has over 27 years of public transit experience in the area of procurement, grants and materials. Additionally, besides having an undergraduate degree, he also possesses a law degree.

• A second Senior Buyer position has been added to staff. The new hire started on June 11, 2012 and he has over 25 years experience in buying materials and services.

• There is a position that is not reflected on the Departmental Organizational Chart since it is currently considered temporary. The temporary individual is currently auditing all of the contract files for completeness and uniformity. He is reviewing for checklists, proper contents as required per the appropriate checklist, and respective type of procurement. If items are missing or not complete they are returned to the appropriate individual for correction. Additionally, a record is being kept and a review and discussion of the appropriate action is being done at the Departmental staff meetings. The temporary position is also conducting cost analysis, where necessary, and performing independent cost estimates. As mentioned above, this position is a temporary position currently, but the review and input by the individual has brought significant value to the procurement processes, and therefore, staff is in the process of creating a permanent position to do these tasks.

Bullet Point #2

Provide FTA with evidence that all Metra staff involved in its purchasing process has been trained in FTA procurement requirements.

One of Metra's responses to the deficiencies noted in the PSR was that Metra would pursue available training provided by FTA, NTI, or other existing sources. Additionally, Metra would offer to host NTI courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

NTI offered four separate FTA related procurement training courses, starting with series I and progressing through to series IV. Ten Metra staff members attended series I, which was held at the Pace headquarters located in Arlington Heights, IL. in April of this year. Four additional Metra staff members attended the series I training in early March that was held in Washington D.C., and then the four attended the series II session that was held in Pittsburgh, PA, in late March, 2012. See Attachment A for the names of the staff members who have attended these sessions. Metra has also offered to host the series III (RFP's and Competitive Contract Negotiations) and series IV (Contract Administration) sessions at our headquarters. Metra has scheduled September 25 - 28 to host the series III course and October 16 - 19 for the series IV course (see attached Course Host Confirmation). Metra plans on sending those staff members that have not attended the series II session to a future scheduled NTI course or offer to host a NTI future series II training session.

Metra also issued an RFP on March 13, 2012 requesting FTA Best Practices Training and Consulting Services to further augment NTI training, as well as to have a focus on the PSR's 24 deficiencies and the corrective action applied to Metra practices (see Attachment B). Proposals were due on April 27, 2012, but none were received. Staff canvassed consulting firms as to why they chose not to participate, and based upon the feedback received, Metra re-issued the RFP with modifications on June 25, 2012. The proposal due date is now August 8, 2012 (See Attachment C).

Bullet Point #3

Provide FTA with evidence that Metra's procurement staff has received adequate procurement training commensurate to their level of responsibilities and are thoroughly knowledgeable of Metra's revised procurement policies and procedures.

Metra also committed to having its Senior Division Director, General Administration conduct an Element-by-Element review/training sessions with all of the appropriate members of the Procurement and Professional Services staff. We stated that the training sessions would review each deficiency and the appropriate corrective action(s) to be implemented. The reviews would include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director would document when they were held, which Elements were discussed, and who attended the training

session. Metra's Senior Division Director, General Administration conducted four training sessions that covered the 24 deficient findings. The review/training included a review of the respective finding, the corrective action(s) required, and the appropriate procurement procedures that govern the respective procurement action. All procurement staff have a copy of the most current Procurement Policy and Procedures manual. The training sessions were held on: March 23, 2012, covering deficient Elements No. 2, 5, 7, 59 and 60; April 5, 2012 covering deficient Elements No. 6, 12, 15, 16 and 18; April 12, 2012 covering deficient Elements No. 19, 24, 25, 36, 37 and 39; and April 19, 2012 covering deficient Elements No. 41, 42, 44, 46, 48, 52 and 56. Please see Attachment D for the related training date, staff sign-in sheet and the deficient Elements that were the respective training topics discussed on those respective dates.

At Metra, the requisition is the document that initiates any procurement process, and the PSR identified areas where improvements were required at the initiation of the procurement process. Therefore, staff has held two training sessions for other Metra departments on how to fill out, and the proper documents required for, a complete and accurate requisition. Some of the items covered during the training session were; independent cost estimates, requisitioner's checklist, approved equals, sole source, and complete specifications. See Attachment E for the sign in sheets for those that attended the sessions on either June 26 or 27, 2012, and some of the relevant training materials that were used during the training sessions.

Bullet Point #4

Provide FTA with evidence that Metra has put in place a process to review and validate on an on-going basis, contracts representing each method of procurement to assure compliance with Metra's policies and procedures, as well as FTA requirements.

Metra has established a four step process to review contract files. First, to assist in contract file organization, as well as providing for a uniform procurement process, Metra has instituted using a document in all of our procurements titled, "Checklist – IFB's and Checklist - RFP's" (see Attachment F). The checklist is divided into three sections that relate to the solicitation documents, award documents, and contract administration documents. The appropriate checklist is to be used for each respective procurement. In the solicitation document, there is a check for the justification of procurement type. Second, the Senior Director, Materials Management is responsible, as a "check" in the process, to review all purchasing requisitions prior to public solicitation for correctness and their appropriateness. Third, the individual that is working in the "temporary" position, which Metra is in the process of establishing as a permanent, full time position, is performing a final 100 percent review of all contracts before they are filed to assure that all of the appropriate documents and materials are in the contract file, and that the "Checklist" is accurately and properly completed. Finally, Metra's Audit Department is also to conduct an independent audit on a periodic basis to assure that Metra is following procedures and corrective actions consistent with FTA requirements.

Bullet Point #5

Provide FTA with evidence that an independent audit function is in place to ensure integrity of Metra's procurement actions.

Metra will provide FTA, by October 31, 2012, with a copy of Internal Audit's detailed audit program for an objective and independent evaluation to ensure that Metra is fulfilling the procedures put in place to remedy findings from the PSR audit. Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended. Additionally, Metra's Internal Audit Department will include a Procurement Department audit as part of its annual audit plan in 2013 and subsequent years.

Follow Up Action Categories

Category 1

Metra shall provide by July 30, 2012, a schedule for procurement training to FTA as a condition for accepting the corrective action and to close the finding. Written evidence of the training and attendees shall be provided to FTA once training has been completed.

Please see responses to Bullet's 2 and 3 as explained above in detail. Metra has completed training that covered all of the 24 deficient PSR findings. Metra has already had staff members attend NTI series I and II (FTA Procurement) training sessions. Metra has offered to host series III and IV NTI training sessions and that offer has been accepted by NTI. The dates and times of when those courses will be held have been established and have been noted above. Once the courses are completed, Metra will submit to the FTA a complete list of all of the attendees and the dates that the respective sessions were held. Additionally, it has been documented and provided in Metra's response above that the deficiencies that were identified in the PSR have been reviewed with the procurement staff (See Bullet Point #3). The review included the respective PSR finding, the PSR recommendation, Metra's corrective action taken and a complete review and discussion of the procurement procedures that were revised.

Metra will also provide staff the opportunity to attend the NTI series II training session as they become scheduled and available for those staff members that could not have previously attended. Metra may also offer to host series II as an additional future option. Future new procurement staff will be allowed to attend the NTI four-series sequenced sessions as they become available.

Discussed in Bullet Point #2 above, Metra has an RFP (proposals are due August 8th) requesting an assessment of Metra's procurement processes in relation to FTA procurement requirements, current procurement procedures at Metra, and FTA Best

Practices. Based upon the assessment and recommended changes to Metra's procurement processes, the contractor is to design a training program that Metra staff will attend.

Category 2

6) Procurement Policies and Procedures (FTA Requirement)

Metra's Response: In a letter dated January 31, 2012, Metra indicated that the procurement procedures were updated to address the deficient areas.

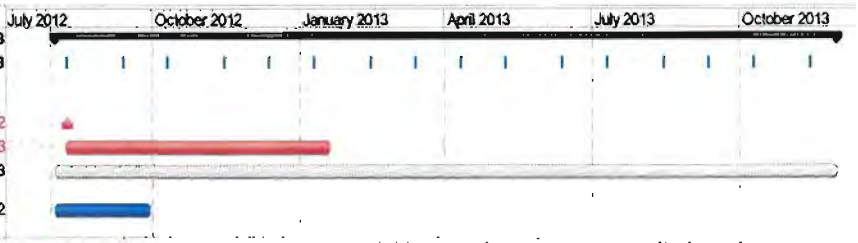
Follow-Up Action (6/12 FINAL):

Metra shall provide by July 30, 2012, a milestone schedule of all procurement actions (procedures must include: federal statutory and regulatory requirements stated as required terms and conditions to be included in various types of contracts, construction bonding requirements and requisitioning procedures) to come into compliance with FTA requirements as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA.

Metra's Follow-Up Action Response:

Metra will submit the revised procedure(s) addressing the federal statutory and regulatory requirements to the FTA by 9/28/12. In the spirit of "continual education" Metra senior staff will, on a monthly basis at scheduled staff meetings, identify a few "key" elements applicable to the FTA Circular 4220.1F, and will discuss and review with the procurement staff their appropriate application and respective requirements. This review process is meant to be an on-going activity to be done on a monthly basis. Additionally, Metra has solicited proposals requesting FTA Best Practices Training and Consulting Services to further augment NTI training, as well as to have a focus on the PSR's 24 deficiencies and the corrective action applied to Metra practices. As noted above, the proposals are due in August. To further Metra's effort's at compliance, the review and verification being done now by the individual that is working in the "temporary" position, which Metra is in the process of establishing as a permanent, full time position, has been performing a final 100 percent review of all contracts before they are filed to assure that all of the appropriate documents and materials are in the contract file, and that the "Checklist" is accurately and properly completed.

Task Name	Start	Finish
August 2012 - December 2013	Wed 8/1/12	Fri 11/29/13
Staff Monthly Meetings (2 elements reviewed per month and any additional areas of concern)	Wed 8/8/12	Wed 11/13/13
RFP Due	Wed 8/8/12	Wed 8/8/12
RFP Review and Contract Award	Wed 8/8/12	Fri 1/18/13
*Internal Review (on-going and perptual)	Wed 8/1/12	Fri 11/29/13
*Submit Revised Procedures (in process)	Wed 8/1/12	Fri 9/28/12



*Note: Above tasks are ongoing. "Start" dates of 8/1/12 have been inserted to illustrate activities only from the present until planned completion.

19) Sound and Complete Agreement (FTA Requirement)

<u>Metra's Response:</u> In a letter dated January 31, 2012, Metra submitted procedures that did not address the minimum elements to be included in contracts such as termination clauses, disputes, payment, compensation and period of performance.

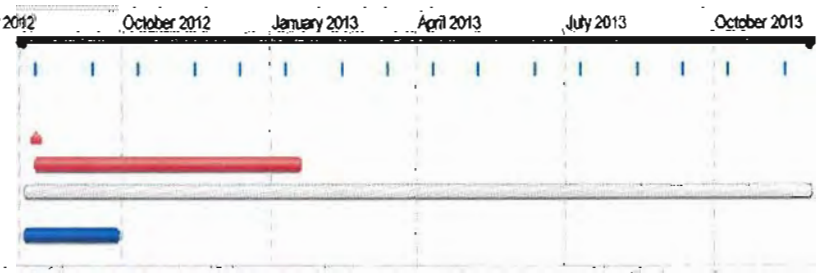
<u>Follow-Up Action (6/12 FINAL):</u>

Metra shall provide by July 30, 2012, a milestone schedule of all procurement actions (procedures must include minimum elements to be included in contracts such as termination clauses, disputes, payment, compensation and period of performance) to come into compliance with FTA requirements as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA.

<u>Metra's Follow-Up Action Response:</u>

Metra will submit the revised procedure(s) outlining the minimum elements to be included in contracts to the FTA by 9/28/12. In the spirit of "continual education" and as mentioned above, Metra senior staff will, on a monthly basis at scheduled staff meetings, identify a few "key" elements applicable to the FTA Circular 4220.1F, and will discuss and review with the procurement staff their appropriate application and respective requirements. This review process is meant to be an on-going activity to be done on a monthly basis. Additionally, Metra has solicited proposals requesting FTA Best Practices Training and Consulting Services to further augment NTI training, as well as to have a focus on the PSR's 24 deficiencies and the corrective action applied to Metra practices. The proposals are due in August. To further Metra's effort's at compliance, the review and verification being done now by the individual that is working in the "temporary" position, which Metra is in the process of establishing as a permanent, full time position, has been performing a final 100 percent review of all contracts before they are filed to assure that all of the appropriate documents and materials are in the contract file, and that the "Checklist" is accurately and properly completed.

Task Name	Start	Finish
August 2012 - December 2013	Wed 8/1/12	Fri 11/29/13
Staff Monthly Meetings (2 elements reviewed per month and any additional areas of concern)	Wed 8/8/12	Wed 11/13/13
RFP Due	Wed 8/8/12	Wed 8/8/12
RFP Review and Contract Award	Wed 8/8/12	Fri 1/18/13
*Internal Review (on-going and perpetual)	Wed 8/1/12	Fri 11/29/13
*Submit Revised Procedures (in process)	Wed 8/1/12	Fri 9/28/12



*Note: Above tasks are ongoing. "Start" dates of 8/1/12 have been inserted to illustrate activities only from the present until planned completion.

37) Price and Other Factors [RFP] (FTA Requirement)

<u>Metra's Response:</u> Metra submitted procedures that covered the process to evaluate A & E proposals, but did not include a proper definition of A & E services as required in FTA Circular 4220.1F.

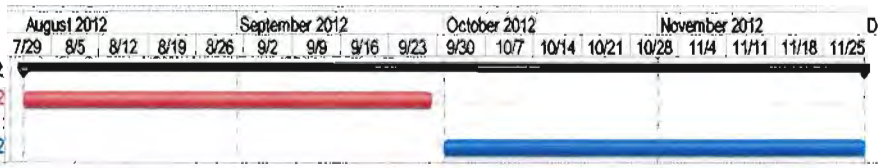
<u>Follow-Up Action (6/12 FINAL):</u>

Metra shall provide by July 30, 2012, a milestone schedule of all procurement actions (procedures must include a proper definition of A & E services) to come into compliance with FTA requirements as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA.

<u>Metra's Follow-Up Action Response:</u>

Metra is reviewing our A & E procedures relative to Illinois law to be compliant with FTA regulations and will submit any revisions, as well as incorporating a proper definition of A & E services to the FTA by 9/28/12. In addition, Metra Procurement staff will conduct training sessions to the appropriate user groups, to incorporate and ensure that the proper procedures relating to A & E services are followed.

Task Name	Start	Finish
September 2012 - December 2012	Wed 8/1/12	Fri 11/30/12
*Submit Revised Procedures (in process)	Wed 8/1/12	Fri 9/28/12
Conduct Training to User Groups	Mon 10/1/12	Fri 11/30/12



*Note: Above tasks are ongoing. "Start" dates of 8/1/12 have been inserted to illustrate activities only from the present until planned completion.

39) Cost Analysis Required [Sole Source] (FTA Requirement)

<u>Metra's Response:</u> Metra submitted revised procedures; however, the procedures did not specifically require cost analysis for sole source procurements, or the separate evaluation of fee.

<u>Follow-Up Action (6/12 FINAL):</u>

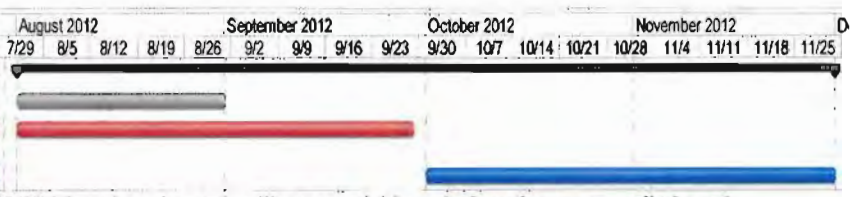
Metra shall provide by July 30, 2012, a milestone schedule of all procurement actions (procedures must specifically require cost analysis for sole source procurements and separate cost analysis evaluation of fee) to come into compliance with FTA as a condition to accepting the corrective action and to close the finding. Written evidence of the milestone schedule shall be provided to FTA.

<u>Metra's Follow-Up Action Response:</u>

Metra's procedures relative to sole sources and cost analysis are being subject to another review by staff to assure that the financial/contractual and procedural issues are properly addressed. It is anticipated that the review will be completed by the end of August

Additionally, the individual that is working in the "temporary" position, which Metra is in the process of establishing as a permanent, full time position, is performing all cost analysis evaluations for sole source and change orders. Metra will submit the revised procedure(s) addressing sole source cost analysis and separate fee analyses to the FTA by 9/28/12. In addition, Metra Procurement staff will conduct training sessions to the appropriate user groups, to incorporate and ensure that the proper procedures relating to cost analysis for sole source procurements and separate cost analysis evaluations of fees are followed.

Task Name	Start	Finish
August 2012 - December 2012	Wed 8/1/12	Fri 11/30/12
*Internal Review (in process)	Wed 8/1/12	Fri 8/31/12
*Submit Revised Procedues (in process)	Wed 8/1/12	Fri 9/28/12
Training for User Groups	Mon 10/1/12	Fri 11/30/12



*Note: Above tasks are ongoing. "Start" dates of 8/1/12 have been inserted to illustrate activities only from the present until planned completion.

Category 3

Metra shall provide by October 31, 2012, as to how it will conduct an objective and independent evaluation to confirm that its procurement actions are compliant with FTA procurement system requirements as a condition to accepting the corrective action and to close the findings. Metra shall provide written evidence of its plan to FTA.

Metra will provide FTA, by October 31, 2012, with a copy of Internal Audit's detailed audit program for an objective and independent evaluation to ensure that Metra is fulfilling the procedures put in place to remedy findings from the PSR audit. Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended. Additionally, Metra's Internal Audit Department will include a Procurement Department audit as part of its annual audit plan in 2013 and subsequent years.

Organization Chart – Materials Management

The Materials Management Department is divided into three (3) Divisions; Purchasing, Professional Services/Contracts and the Materials Division.

The Purchasing Division is responsible for procuring the material (goods) requirements for all of Metra whether utilizing operating, State or Federal funds.

The Professional Services/Contracts Division is responsible for procuring the professional services requirements for all of Metra whether utilizing operating, State or Federal funds.

The Materials Division is responsible for over seeing and managing the material requirements for Metra through the material inventory system and the operation of Metra's four (4) storehouses.

PLEASE NOTE:

The Senior Director, Materials Management position, due to the prior individual retiring, has been filled by a person that has over 27 years of transit experience in the area of procurement, grants and materials. Additionally, the new hire besides having an undergraduate degree, also possesses a law degree.

A second Senior Buyer position has been added to staff. The new hire started on June 11, 2012 and they have over 25 years experience in buying materials and services.

There is a position that is not reflected on the Departmental Organizational Chart since it is currently considered temporary. However, staff is in the process of creating a permanent position to do the same tasks. The individual is currently auditing all of the contract files for completeness and uniformity. They are reviewing for checklists, proper contents as required per the appropriate checklist and respective type of procurement. If items are missing or not complete they are returned to the appropriate individual for correction. Additionally, a record is being kept and a review and discussion of the appropriate action is being done at the Departmental staff meetings. This position is also conducting cost analysis where necessary and performing independent cost estimates.

BOARD OF DIRECTORS

EXECUTIVE DIRECTOR/CEO
Alex D. Clifford

DEPUTY EXECUTIVE DIRECTOR
ADMINISTRATION
Alex Wiggins

SENIOR DIVISION DIRECTOR
GENERAL ADMINISTRATION
Paul Kisielius

ADMIN SECRETARY
Marchell Redmond

SENIOR DIRECTOR
MATERIALS MANAGEMENT
Geoffrey Urban

DEPARTMENT HEAD
MATERIALS
Bruce Darin

- SECTION CHIEF MATERIALS Jeffrey Maly
- SR MATERIALS MGMT COORDINATOR Vacant
- MATERIALS MGMT COORDINATOR Steven Vargas
- MATERIALS COORD ASSISTANT Lydia Elbaz
- CG MATERIALS ANALYST Michael Darnell
- INVENTORY CLERK Diane Kezerle
- BLUE ISLAND STOREHOUSE
- KYD STOREHOUSE
- WESTERN AVE STOREHOUSE
- 47TH STREET STOREHOUSE

DEPARTMENT HEAD
PROCUREMENT
Carolyn Capranica

- SENIOR BUYER Lori Lee
- BUYER I Denise Johnson
- BUYER I Jennifer Zellers
- Senior Buyer Joe Onesto
- BUYER I Urbano Damian
- BUYER I Brenda Resendez
- PURCHASING CLERK Robert Martin

DEPARTMENT HEAD
PROF SERVICES
Carlos Gamboa

- SR CONTRACT AGENT Edward Remus
- CONTRACTING AGENT Robert Rich
- PROFESSIONAL SVCS COORDINATOR Stephen Bauman
- PROFESSIONAL SERVICES ASSOC Ann Marie Di Prima
- PURCHASING CLERK Ricardo Rios Jr
- ADMIN SECRETARY Vacant

ATTACHMENT A

NTI Series I (FTA) TRAINING – April, 2012

CAROLYN CAPRANICA, Department Head, Procurement
URBANO DAMIAN, Buyer
BRENDA RESENDEZ, Buyer
JENNIFER ZELLERS, Buyer
CARLOS GAMBOA, Department Head, Professional Services/Contracts
ED REMUS, Senior Contracting Officer
ANNMARIE DI PRIMA, Professional Services Associate
BRUCE DARIN, Department Head, Materials
MICHAEL DARNELL, Materials Analyst
STEVE VARGAS, Senior Materials Management Coordinator

NTI Series I (FTA) TRAINING – March 5 - 9, 2012

LORI LEE, Senior Buyer
DENISE JOHNSON, Buyer
STEVE BAUMAN, Professional Services Coordinator
ROBERT RICH, Contracting Agent

NTI Series II (FTA) TRAINING – March 26 - 30, 2012

LORI LEE, Senior Buyer
DENISE JOHNSON, Buyer
STEVE BAUMAN, Professional Services Coordinator
ROBERT RICH, Contracting Agent

NTI Series III and IV (FTA) TRAINING

Metra will host the series III (RFP's and Competitive Contract Negotiations) September 25 – 28, and series IV (Contract Administration) October 16 – 19. Since Metra will be hosting these sessions, the entire procurement staff will be able to attend.

National Transit Institute

COURSE HOST CONFIRMATION FORM

July 24, 2012

Lynnette H. Ciavarella, Senior Division Director
Metra Commuter Rail
547 W. Jackson Boulevard
Chicago, IL 60661-5717

Dear Lynnette:

Thank you for agreeing to host an NTI course. This letter provides the details regarding the course delivery and outlines the responsibilities of an NTI course host.

Course Title: RFP's and Competitive Contract Negotiations

Course Schedule: September 25-27, 2012 Tuesday - Friday

Daily Schedule: 8:30 am – 4:30 pm (8:00 am registration on Tuesday)
8:30am – 12:00pm (Friday)

Course Location*: Metra Commuter Rail
547 W. Jackson Boulevard, 13th Floor Board Room, Suite 1100
Chicago, IL 60661-5717

* The course location must be ADA accessible and reachable via public transportation. Please notify NTI immediately if there is a problem.

Course Location Contact: Paul A. Kisielius – 312-322-6666 – kisieliu@metrarr.com

NTI Instructor: James Battie

Training Room Set-Up: Classroom or Clusters for 35 with presenter table with chair in front and materials table in back. Please provide a registration table in the back of the room.

Audio/Visual Requirements: Data Projector ready for Power Point with screen in the center front of the room.
Flipcharts and markers (right front corner of room).

Course Materials to be shipped to: *Paul A. Kisielius*, Senior Division Director
Metra Commuter Rail
547 W. Jackson Boulevard
Chicago, IL 60661-5717

As an NTI course host, your organization agrees to provide the facilities and equipment listed above. In addition, please provide me with an electronic copy of directions to the training location.

NTI will provide the course instructors and materials. The lead instructor will contact you prior to the course delivery to introduce him or herself. The course materials will be shipped to the person identified above. The materials may arrive in several shipments. The materials will include course manuals, handouts, name tags, evaluations, certificates, and a participant list. You will be provided email notification regarding each shipment.

In return for hosting the course, up to ten (10) seats in the course will be held for your organization. A list of your participants including each person's name, title, organization, address, phone, fax, and email is due no later than three (3) weeks prior to the course delivery. Please notify us at that time if any of your attendees require special accommodations regarding their course material. After this deadline, unassigned seats will be released for other attendees.

Please note that the host property and the NTI shall not incur expenses on either party's behalf, unless approved previously by the other party in writing.

Please indicate your concurrence with these arrangements by signing the bottom of this letter and faxing it back to me by **July 30, 2012**. This will ensure that this course is set-up to receive registrations. If you have any questions, please do not hesitate to call me.

Sincerely,

Barbara Van Dyke

Barbara Van Dyke
Program Coordinator
732-932-1700 Ext. 211
bvandyke@nti.rutgers.edu

The above details are concurred to by:

Name

7-25-12
Date

National Transit Institute

COURSE HOST CONFIRMATION FORM

July 25, 2012

Lynnette H. Ciavarella, Senior Division Director
Metra Commuter Rail
547 W. Jackson Boulevard
Chicago, IL 60661-5717

Dear Lynnette:

Thank you for agreeing to host an NTI course. This letter provides the details regarding the course delivery and outlines the responsibilities of an NTI course host.

Course Title:	Contract Administration
Course Schedule:	October 16-19, 2012 Tuesday - Friday
Daily Schedule:	8:30 am – 4:30 pm (8:00 am registration on Tuesday) 8:30am – 12:00pm (Friday)
Course Location*:	Metra Commuter Rail 547 W. Jackson Boulevard, 6th Floor Board Room, Suite 1100 Chicago, IL 60661-5717

* The course location must be ADA accessible and reachable via public transportation. Please notify NTI immediately if there is a problem.

Course Location Contact:	Paul A. Kisielius – 312-322-6666 – kisieliu@metra.rr.com
NTI Instructor:	James Battie
Training Room Set-Up:	Classroom or Clusters for 35 with presenter table with chair in front and materials table in back. Please provide a registration table in the back of the room.
Audio/Visual Requirements:	Data Projector ready for Power Point with screen in the center front of the room. Flipcharts and markers (right front corner of room).

Course Materials to be shipped to: *Paul A. Kisielius*, Senior Division Director
Metra Commuter Rail
547 W. Jackson Boulevard
Chicago, IL 60661-5717

As an NTI course host, your organization agrees to provide the facilities and equipment listed above. In addition, please provide me with an electronic copy of directions to the training location.

NTI will provide the course instructors and materials. The lead instructor will contact you prior to the course delivery to introduce him or herself. The course materials will be shipped to the person identified above. The materials may arrive in several shipments. The materials will include course manuals, handouts, name tags, evaluations, certificates, and a participant list. You will be provided email notification regarding each shipment.

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Please note that the host property and the NTI shall not incur expenses on either party's behalf, unless approved previously by the other party in writing.

Please indicate your concurrence with these arrangements by signing the bottom of this letter and faxing it back to me by **July 30, 2012**. This will ensure that this course is set-up to receive registrations. If you have any questions, please do not hesitate to call me.

Sincerely,

Barbara Van Dyke

Barbara Van Dyke
Program Coordinator
732-932-1700 Ext. 211
bvandyke@nti.rutgers.edu

The above details are concurred to by:

Name

7-25-12
Date

ATTACHMENT B

REQUEST FOR PROPOSAL

EXHIBIT 1

United States Department of Transportation, Federal Transit Administration Best Practices Training and Consulting Services

RFP NO.: 49109

PROPOSAL DUE DATE: April 13, 2012 BY 10:00 A.M.

CONTRACTING AGENT: Steve Bauman, C.P.M.

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION D/B/A METRA
PROFESSIONAL SERVICES/CONTRACTS
547 WEST JACKSON BOULEVARD
CHICAGO, IL 60661

NO OFFER BID SHEET

NO OFFER: If no bid is to be submitted, detach this sheet from the Request for Quotation, complete the information requested, fold, staple, affix postage, enter return address and mail.

NO ENVELOPE NECESSARY.

NO BID SUBMITTED FOR REASONS CHECKED:

( ) CANNOT COMPLY WITH SPECIFICATIONS
( ) DO NOT PERFORM THIS SERVICE
( ) OTHER (PLEASE SPECIFY)_____

WE DO ( ) DO NOT ( ) DESIRE TO BE RETAINED ON YOUR MAILING LIST FOR FUTURE ACQUISITIONS OF THIS TYPE.

SIGNATURE AND
TITLE:_____

COMPANY:_____

(FOLD ALONG DOTTED LINE)

FROM: AFFIX POSTAGE HERE

METRA
PROFESSIONAL SERVICES/CONTRACTS
11TH FLOOR
547 WEST JACKSON BOULEVARD
CHICAGO, IL 60661

RFP NO.: 49109
TITLE: U.S.D.O.T., F.T.A. Best Practices Training and Consulting Services
COMM: 5722, 5724, 5704
BUYER: Steve Bauman, C.P.M.

REQUEST FOR PROPOSALS

United States Department of Transportation, Federal Transit Administration (FTA) Best Practice Training and Consulting Services

RFP Number: 49109

Proposal Due Date: April 12, 2012

Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra
Professional Services/Contracts
11th Floor
547 West Jackson Boulevard
Chicago, IL 60661

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4. Proposal Format and Requirements	7
5. Basis of Award and Reservation	10
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REQUEST FOR PROPOSALS

United States Department of Transportation, Federal Transit Administration (FTA) Best Practice Training and Consulting Services

Procurement & Materials

1. Introduction

A. Purpose

The Northeast Illinois Regional Commuter Railroad Corporation (d/b/a Metra), a political subdivision of the State of Illinois pursuant to the Regional Transportation Authority Act (70 ILCS 3615/1.01 et seq.) as amended, is seeking to contract for Procurement Best Practice Training and Consulting Services to assess, train, and consult with various Metra Department personnel in improving Metra's understanding of and compliance to various Federal grant conditions, including the United States Department of Transportation, Federal Transit Administration regulations (FTA Circular 4220.1F).

B. Metra Background

The Commuter Rail Division, of the Regional Transportation Authority, a unit of Illinois local government created under 70 ILCS 3615/1.01 et seq., and its operating corporation, Northeast Illinois Regional Commuter Railroad Corporation (cumulatively known as "Metra"), are recognized as one of the best commuter rail systems in the United States. We currently operate throughout the six counties of Northeastern Illinois. Our mission is to provide safe, reliable, on-time service; to maintain the existing rail assets of the region; to know our customers and promote our service; and to work and speak on behalf of the commuter rail component of the region's transportation network.

Metra is responsible for all commuter rail operations in the Northeastern Illinois area, including day-to-day operations, fare and service levels, finance, capital improvements,

passenger services, safety, and system planning. Under Metra's supervision, commuter rail service is also operated by private carriers under contract to Metra. These contracts are called purchase of service agreements (PSA's). These private carriers are:

- Union Pacific Railroad (UP)
- Burlington Northern Santa Fe Railway (BNSF)
- Northern Indiana Commuter Transportation District (NICTD)
  - Owner and Operator of the South Shore Line.

2. Project Background

A. Introduction

Metra requires an accurate, complete and relevant assessment to address the training needs of personnel to understand Federal procurement contract compliance conditions. The successful proposer will review the FTA's Procurement System Review ("PSR") 2010 Report and Metra's responses relative to corrective actions to be taken based upon the PSR findings. Additionally, the consultant is to review Metra's current Procurement Policies and Procedures and incorporate the procedures as part of the training process relative to the PSR findings and Metra's response to the PSR findings. Process firms do not typically employ instructional designers and trainers; they generally subcontract training-related development and delivery to third-party vendors. Metra acknowledges this practice. However, Metra requires sub-contracting vendors to adhere to explicit materials development and delivery specifications.

B. Challenges

There will be challenges to training Metra personnel on FTA procurement procedures because:

- Content must support multiple departments and managers with various levels of process knowledge;
- Staff has different access, knowledge and technological capabilities; and
- Course work may have to be subdivided based on Metra personnel needs.

Metra will require the selected firm to:

1. Within 60 days of receiving the *Notice to Proceed,* submit an overall Training Program Plan that contains a detailed outline and a project schedule for Metra's approval. This will include at least the following?
   - Delivery dates for training materials;
   - The course modules and corresponding lessons;
   - The types of deliverables for each course module (CBT, hard copy materials, etc.);
   - Project Team hierarchy; and
   - Communication and reporting.

2. Within 15 working days after receiving the initial Training Program Plan, Metra will review and provide changes/comments or corrections to the Training Program Plan. Consultant will then have 10 working days to resubmit the Training Program Plan with the requested changes. The Training Program Plan must be approved by Metra in writing before the project can progress forward.

3. Perform all training activities on site at the Metra offices at 547 W. Jackson Boulevard, Chicago, IL.

4. Clearly define the course duration and class size for each topic, subject to review and approval of Metra Management. Additionally, if an employee misses a class, address how a "make-up" class will be offered.

5. Assess Metra's training and organizational needs to comply with FTA procurement requirements. Proposers should assume that the following personnel will be trained:
    a. 16 procurement department personnel involved in third party contracting
    b. 5 engineering department personnel involved in A/E consulting contracts and construction contracts
    c. 5 grant administrators and planners
    d. 4 law department personnel
    e. 3 audit department personnel
    f. 4 mechanical department personnel
    g. 4 DBE personnel
    h. Up to 8 additional employees from miscellaneous departments

    NOTE: Proposer must assume that only ½ of the personnel listed above can be trained at once so that each department has sufficient work force capacity.

6. Train to minimum and best practice standards for individual agency practices as described in the FTA Circular 4220.1F and the Master Agreement, and provide participants with a framework for examining basic issues pertaining to third-party contracting. Courses should be conducted utilizing exercises, case studies, and other interactive training activities. Additionally, emphasis should be placed upon the Procurement System Review ("PSR") findings (conducted in 2010) and the correlating Metra responses to the PSR findings. Both documents (PSR findings and Metra's responses) will be provided at the time of the Notice to Proceed to the successful consultant.

7. Provide courses designed to strengthen the procurement practices of transit authorities by improving the ability to perform cost and price analysis. The course should focus on "best practices" and several hands-on exercises to augment explanations of acquisition strategies, design-build contracts, using data from cost and price analysis and price and cost certification. The advantages and disadvantages in using different types of contracts and specifications used by Metra should be covered in great detail.

8. Train and Consult in designing procurement procedures (that are compliant with FTA Circular 4220.1F), contract types, and processes, including:

    - Acquisition Planning and Strategy,
    - Competitive Proposal Negotiations,
    - Non-Competitive and Emergency Contract Negotiations,
    - Negotiating Architectural/Engineering Service Contracts,
    - Other Negotiated Procurement Methods,
    - Negotiation Skills,
    - Concessions,
    - The Contracting Environment,
    - The Contract Administration Team,
    - Proactive Contract Administration,
    - Managing Communication Between Contractor and Agency,
    - The Influence of Pre-award Activity on Contract Administration,
    - Modifying or Changing the Contract,
    - Contractual Remedies Addressing Performance Issues,
    - Resolution of Disputes, and
    - Contract Closeout.

9. The contractor must develop materials and deliver training that includes:

    - Comprehensive conceptual information about the procurement procedures (Metra will provide its current Procurement Policies and Procedures at the issuance of the Notice to Proceed)
    - Functional descriptions
    - Explicitly defined terminology of the procedures, contract types and processes

10. The contractor is required to develop and deliver training based on a broad knowledge of existing Metra processes.

11. The contractor must meet the technology specifications set by Metra. All web-based and computer-based development tools must integrate into Metra's current hardware and software tools.

12. The contractor must design, develop and deliver the accepted initial course materials to Metra at least 30 days before the training begins. The course materials must include:

    - Training guides on all subjects
    - Hand outs/Job Aids
    - Presentations
    - Exams
    - Practical Exercises

C. Project Assumptions

The following is an initial list of assumptions and conditions the Proposer can expect during the course of this project:

- Desks and workspace for up to two concurrent Proposer staff with close access to Materials Management staff will be provided in Metra offices at 547 W. Jackson.
- All interaction with Metra staff will occur during Metra normal business hours, 8 A.M. to 5 P.M., Monday-Friday.
- Access to users and subject matter experts.
- A Materials Management Department Project Leader will be assigned to the project through all phases and activities.
- Metra and the Proposer will co-manage the project.
- Metra will establish all necessary committees to jointly plan the project and ensure project resources are available and committed to meet project schedules

D. Contract

As a result of this Request for Proposal ("RFP"), Metra intends to award one contract for FTA best procurement practice training and consulting services, but reserves the right to award more or none. The project will be a fixed price contract with milestone deliverables. The Proposer must identify and describe deliverables consistent with the Proposer's project approach and methodology section as described in the proposal. These deliverables will be used to schedule milestone payments for the work. Total fixed price must be included in the Statement of Offer and detailed by each milestone deliverable.

E. Reporting Requirements

With all invoice submittals, Metra will require an itemized report from the contractor on all matters pertaining to that specific invoice.

3. Term

Contracts awarded pursuant to this Request for Proposal shall be for a period of 18 months from the date of award.

4. Proposal Format and Requirements

A. Format

1. Submit proposal in EIGHT (8) copies. One copy marked **"ORIGINAL" containing the original signature copies**;
2. All documents must be in 8.5" X 11" format; and

3. Mark the outside of your sealed proposal: RFP-49109.

B. General

Category Identification
1. Proposal name and proposal number;
2. Name of proposer;
3. Address and phone number of proposer; and
4. Proposer's manager or contact person, phone number and e-mail address.

Narrative
1. Statement of project approach and methodologies to be used.
2. Description of preliminary work plan and tasks.
3. Description of project management approach to be used.

Staff
1. Identification of staff, roles, technical disciplines, and areas of expertise to be assigned to this contract; and
2. Resumes of assigned staff members.

Experience
1. Describe the firm's and its personnel's experience and expertise in the areas of FTA Best Procurement Practice Training and project work scope. Describe all comparable project experiences;
2. Describe other pertinent project experience with transit or public sector organizations that may be applicable to training Metra personnel and consulting; and
3. Provide at least three (3) verifiable references for the assigned staff members, including contact person and phone number. References should be obtained from individuals within the last three years.

C. Proposals must be submitted to:

Mr. Steve Bauman
Contracting Agent
Professional Services/Contracts
Northeast Illinois Regional Commuter Railroad Corporation/Metra
11th Floor
547 West Jackson Blvd.
Chicago, IL 60601.

D. Proposal Questions for both Administrative and Technical Aspects must be submitted in writing to:

Mr. Steve Bauman.
Contracting Agent

Professional Services/Contracts
Northeast Illinois Regional Commuter Railroad/Metra
11th Floor
547 West Jackson Blvd.
Chicago, IL 60661
Fax: 312-322-6619.

Questions are to be submitted **by fax only** and must be received before 4:00 P.M. on April 2, 2012. For DBE questions only, you may contact Metra's DBE Officer, Ms. Janice Thomas, at (312) 322-6323. All interpretations Metra elects to give will be made in the form of written Addenda to the Proposal Documents, which Addenda shall become a part of the Operation Agreement. The Addenda will be furnished to all persons who obtained Proposal Documents

E. Statement of Offer

1. By submitting your proposal you are stating that the proposal is good for 180 days. Submit a cover letter stating that your offer is valid for 180 days;
2. Please include the name, title, address, and telephone number of the individual authorized to negotiate and contractually bind the Proposer during the period of the proposal evaluation and contract finalization;
3. Total fixed price must be included in the Statement of Offer and detailed by each milestone deliverable;
4. Exhibit 1-B Affidavits/Certifications must be signed, notarized, and returned with the proposal;
5. Exhibit 1-C DBE Compliance Requirements Form(s) as required and returned with proposal; and
6. The successful proposer will be expected to execute a contract substantially similar to the attached form/sample, Exhibit 1F. Metra will not negotiate any of the material terms or conditions of the contract.

F. Pre-Proposal Conference.

A pre-proposal conference will be held on March 22, 2012 in the Bid Opening Room on the 11th floor, 547 West Jackson Boulevard, Chicago, Illinois. Statements made by Metra at a pre-proposal conference are not controlling or official unless reduced to writing and issued pursuant to an addendum.

G. Proposal Due Date

Proposals must be received in the Metra Materials Management Department by 10:00 a.m. Chicago Time on April 12, 2012 ("Due Date"). Mark the outside of the packaged proposals with the proposal name and proposal number. **Any proposals received after 10:00 a.m. will be returned unopened.**

5. Basis of Award and Reservations

A. Evaluation Criteria

Proposals must be complete and adhere in all material respects to the required format and instructions to be considered. The written proposal, presentation, and responses to questions that arise during the interview, and any best and final offer ("BAFO") will be evaluated by Metra's Evaluation Committee. Proposals will be scored by the Evaluation Committee based upon a consensus score of the evaluation criteria. There will be a re-scoring by the Committee if presentations/interviews and/or BAFO's are conducted and the evaluation criteria will be based on the criteria stated below. The following criteria are listed in the order of importance (some of which may be of equal value):

1. Firm's plan and detail on how it will address the scope of services;
2. Firm's demonstrated expertise and experience in FTA Best Procurement Practice Training and consulting;
3. Costs associated with the proposal;
4. Qualifications and experience of personnel assigned, and commitment of resources to this contract;
5. Familiarity with public entities, public transit, transportation, and other issues that may be applicable to representing Metra; and
6. References.

B. Reservations

All criteria listed under the above Evaluation Criteria for this RFP will be used in the evaluation process to determine the most advantageous proposal. All proposals will be evaluated solely by Metra, which reserves the right to select for award the highest ranked firm on the basis of what is in Metra's best interest and/or gives the greatest benefits to Metra. Metra will solely be responsible in determining what is in its best interest and what provides Metra the greatest benefits. You must read and understand the solicitation and tailor your proposal to ensure compliance. Metra reserves the right to: (i) amend the solicitation; (ii) reject any or all proposals submitted; (iii) award by category, group of categories, or grand total; (iv) waive any informalities or minor defects; (v) accept any proposal as submitted with or without negations or interviews, and interview any proposer Metra deems appropriate; (vi) require revisions to, corrections of, other changes to, or additional information for any proposal submitted as a condition to its being given further consideration; (vii) negotiate with proposers having a reasonable chance of being selected in any manner it deems fit as long as it is consistent with any applicable federal, state or Metra requirement; (viii) issue a revised RFP; (ix) negotiate with all proposers or negotiate with one or more proposers who come closest to complying with this RFP; (x) waive any informalities or defects in any proposal, whichever is in Metra's best interests as determined solely by Metra; and (xi) determine, in Metra's sole discretion, what is responsive, material, a minor or clerical irregularity, or mistake. Metra may request Best and Final Offers when appropriate. This competitive process may require you to submit additional information and otherwise cooperate with us. If you do not comply with

requests for information and cooperate, Metra may reject your proposal. Metra is not responsible for and will not pay any costs associated with the preparation and submission of your proposal. No proposer shall have any rights against Metra arising at any state of the solicitation from any negotiations that take place, or from the fact that Metra does not select a proposer for negotiation, or because Metra chooses another proposer with whom to contract. If your firm is selected, you shall not commence, and will not be paid for any work performed prior to the date all parties execute the contract.

C. Metra's Proposal Protest Procedure

Metra will use, if necessary, the applicable provisions of its Bid Protest Procedures (Procedures) for this RFP. References under the procedures to bid, bidders, and the lowest bidder shall mean proposal, proposers, and highest ranked proposal, respectively. The proposer has the right to protest against the RFP. There are important time limits set forth in the Procedures which are summarized here, but this paragraph is not meant to be a substitute for the Procedures. For a complete copy of Metra's Procedures and instructions on the applicable terms and provisions, contact the Contracting Officer. Any discrepancies between this paragraph and the Procedures shall be decided by applying the Procedures, except that deadlines stated below are specifically for the RFP. If you wish to protest this solicitation, the protest must be filed with Metra no later than (5) days before the Due Date. If you wish to protest the proposal evaluation, the protest must be filed with Metra no later than five (5) days after you have been notified that your proposal was rejected as non-responsive. If you wish to protest award of the Contract, the protest must be filed with Metra, in writing, no later than five (5) days after Metra notifies proposers, in writing or orally, of its intent to award the Contract.

6. **Governing Law and Forum.** This Request for Proposal and any resulting contract there from shall be governed by the laws of the State of Illinois, and venue for any disputes that may arise shall be either the Circuit Court of Cook County Illinois or the United States District Court for the Northern District of Illinois.

7. **FOIA Requirements.** Metra is subject to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq., "FOIA"), and pursuant to FOIA, your proposal and any subsequent agreement is subject to disclosure. In addition, from time to time, Metra may be required to produce certain "public records" as defined in Section 2 of the FOIA, that are in the possession of or under the control of proposer/operator. Upon Metra's notification to proposer/operator of a request pursuant to the FOIA, proposer/operator will, within two (2) business days of Metra's notice, either (i) produce the public records, (ii) notify Metra, in writing, that additional time is required to produce the public records, or (iii) notify Metra, in writing, that the public records do not exist or have been destroyed. In the event that proposer/operator requires additional time to produce the public records, the written notification under (ii), above, will provide an explanation for the delay and the date when the public records will be received from proposer/operator by Metra. Proposer/operator agrees that in no event shall a delay to produce records exceed five (5) business days.

If any failure by proposer/operator to timely comply with a request for public records results in any adverse consequences to Metra, including, but not limited to, fines or penalties being imposed on Metra, said failure by proposer/operator shall be deemed a material breach of this Agreement, and proposer/operator shall indemnify, defend, and hold harmless Metra for any damages, costs, liabilities, and fees (including attorney's fees) that result from such breach.

8. **Exhibits:** The following Exhibits are attached hereto and made part hereof. In addition to this Request for Proposal, the Exhibits shall become a part of the contract resulting from this Request for Proposal:

Exhibits

Exhibit 1A – Public Notice of Request for Proposal, pp 1
Exhibit 1B – Affidavits/Certifications, pp 1-13
Exhibit 1C – Metra Disadvantage Business Compliance Requirements, pp 1-18
Exhibit 1D – Civil Rights Requirements, pp 1-2
Exhibit 1E – Insurance Requirements, pp 1-4
Exhibit 1F – Sample Professional Services Agreement, pp 1-27
Exhibit 1G - FTA Contract Clauses, pp 1-15

IMPORTANT NOTE: Exhibits 1B, and 1C must be executed and included with your proposal submittal.

EXHIBIT 1A

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION D/B/A METRA

METRA RFP NO. 49109

The Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra desires to obtain sealed proposals for the following project:

United States Department of Transportation, Federal Transit Administration Best Practices Training and Consulting Services

N/A	N/A	N/A

If your firm has the necessary expertise in this field and is interested in receiving the detailed Request for Proposal, please direct a letter to Steve Bauman, Professional Services Coordinator, Metra, 547 West Jackson Boulevard, 11th Floor, Chicago, Illinois, 60661.

ALL PROPOSALS MUST BE RECEIVED AT THE ABOVE ADDRESS "NO LATER THAN" 10:00 A.M. ON April 13, 2012.

NOTE:

IF YOU HAVE QUESTIONS CONCERNING THE AVAILABILITY OF PROPOSALS, PLEASE CONTACT MR. RICK RIOS AT (312) 322-6673.

IF YOU HAVE TECHNICAL QUESTIONS ABOUT THE PROJECT PLEASE SUBMIT YOUR QUESTIONS NO LATER THAN 4:00 P.M. APRIL 2, 1012, FAX TO (312) 322-6619.

THE PRE-PROPOSAL CONFERENCE FOR THIS ACQUISITION WILL BE AT 10:00 A.M. ON MARCH 22, 2012, AT METRA'S HEADQUARTERS, 547 W. JACKSON BLVD., 11th FLOOR, BID OPENING ROOM, CHICAGO, IL.

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

D/B/A/METRA

Contracting Agent: Steve Bauman, C.P.M.

Exhibit 1-B

AFFIDAVITS/CERTIFICATIONS FOR CONSULTANTS

FILL IN THE BLANKS AND SUBMIT THIS FORM WITH PROPOSAL.
HAVE APPLICABLE SIGNATURES NOTARIZED ON LAST PAGE.

STATE OF _____

COUNTY OF _____

The Undersigned represents that s/he is_____("Undersigned") the
(Print Name)

_____ of _____
(Print President or Other Proper Title) (Print Name of Entity)

("Company" or "Undersigned") and is authorized to attest on behalf of himself/herself and

_____, and states as follows:
(Print Name of Company)

A. PROHIBITED INTERESTS AND CONFLICTS OF INTEREST.

1. PUBLIC OFFICER PROHIBITED ACTIVITIES ACT AFFIDAVIT.

The Company is the proposer submitting this proposal and that the proposer is in compliance with provisions set forth in the Public Officer Prohibited Activities Act, 50 ILCS 105/0.01, et seq., and to the best of its knowledge and belief, no person holding office, either by election or appointment under the laws or constitution of this State, is in any manner interested, either directly or indirectly, in his/her own name or in the name of any other person, association, trust, or corporation, in this contract or the performance of any work/services under this contract which such officer has been or may be called upon to act or vote.

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2. METRA'S CONFLICTS OF INTEREST ORDINANCE.
Pursuant to 4.03 of Metra's Bidding Regulations:

Members of the Board, officers, and employees of Metra, their spouses, their children, their parents, their brothers and sisters and their children, are prohibited from having or acquiring any contract or any direct pecuniary interest in any contract which will be wholly or partially performed by the payment of funds or the transfer of property of the Metra. Any firm, partnership, association, or corporation from which any member of the Board, officer, or employee of the Metra is entitled to receive more than seven and one half percent (7-1/2%) of the total distributable income, is prohibited from having or acquiring any contract or direct pecuniary interest in any contract which will be performed in whole or in part by payment of funds or the transfer of property of Metra.

Any firm, partnership, association, or corporation from which members of the Board, officers, employees of Metra, their spouses, their children, their parents, their brothers and sisters and their children, are entitled to receive in the aggregate more than fifteen percent (15%) of the total distributable income, is prohibited from having or acquiring any contract or direct pecuniary interest in any contract which will be performed in whole or in part by the payment of funds or the transfer of property of Metra.

Board members and employees are prohibited from participating in the selection, award, or administration of a contract supported by Metra funds, federal funds, or any other grant funds if a real conflict of interest or, to his or her knowledge, an apparent conflict of interest would be involved. A real or apparent conflict of interest would arise when any of the following has an interest in the entity selected for award: (a) an employee, officer, board member, or agent; (b) any member of his or her immediate family (as listed above in the first paragraph); (c) his or her business partner; or (d) an organization that employs, or intends to employ, any of the above. "Apparent" is defined under this paragraph as being one in which a person is an officer or director of an entity, or has an interest in the ownership or profits of an entity, and such interest appears substantial to a reasonable person. "Interest" is defined under this paragraph as a direct or indirect entitlement to receive any of the entity's profits.

In addition, Undersigned states that no officer of Metra has represented, either as an agent or otherwise, the proposer with respect to this application or bid for contract. Finally, Undersigned states that to best of its knowledge and belief, no officer of Metra has received or been offered from any person on behalf of the proposer, either directly or indirectly, any money or other thing of value as a gift, bribe, or means of influencing any vote or action in any official's capacity. Furthermore, Undersigned certifies that, to the best of its knowledge, it is in compliance with Metra's Bidding Regulations and is unaware of any of the foregoing persons having an interest prohibited by Section 4.03 of the Bidding Regulations.

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B. NON-COLLUSION AFFIDAVIT.

The Company is the proposer submitting this proposal and that such proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, organization or corporation; that such proposal is genuine and not collusive or a sham and that said proposer has not been a party to any agreement or collusion among bidders/proposers or prospective bidders/proposers in restraint of freedom of competition by agreement to bid a fixed price or otherwise, or to refrain from proposing, and has not, directly or indirectly, by agreement, communication, or conference with anyone, attempted to induce action prejudicial to the interest of Metra, or of any proposer or anyone else interested in the proposed contract.

C. CERTIFICATE FOR PROPOSAL.

As a part of its offer to contract for services to Metra, the Undersigned hereby certifies that neither the Company nor any of its principals are barred from proposing on the aforementioned contract as a result of a violation of either Section 33 E-3 or 33-4 of 720 ILCS 5/33 E.

D. CERTIFICATE OF DEBARMENT.

As the potential contractor for a primary contract, or subcontractor to a primary contractor for subcontracts over $100,000, the Undersigned certifies to the best of its knowledge and belief, the Company and its principals:

1. Are not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Debarred from federal contracts for violations of various public contracts incorporating labor standard provisions;

2. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, state, or local government entity;

3. (a) have not been convicted under the laws of Illinois or any other state of bribery or attempting to bribe any government officer or employee or have made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct. No business shall be barred from contracting with Metra as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business and: i) the business has been finally adjudicated not guilty; or ii) the business demonstrates to Metra, and Metra finds that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer, or high managerial agent on behalf of the business as provided in paragraph (2) of subsection (a) of Section 5-4 of the Criminal Code of 1961. For purposes of this Subsection (a), when an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and in accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct. Contractor hereby certifies that the contractor and its subcontractors are not barred from being awarded a contract or subcontract under this Section.

(b) are not convicted of a felony. No person or business shall do business with Metra from the date of conviction until 5 years after the date of completion of the sentence for that felony, unless no person held responsible by a prosecutorial office for the facts upon which the conviction was based continues to have any involvement with the business. Contractor hereby certifies the the Contractor is not barred from being awarded a contract under this Section.

4. Are not presently indicted for, or otherwise criminally or civilly charged by a government entity (federal, state or local) for any reason; or

5. Have not, within a three-year period preceding this proposal, had one or more public transactions (federal, state or local) terminated for cause or default.

(If the Undersigned is unable to certify to any of the statements in this certification, the Undersigned shall attach an explanation).

THE UNDERSIGNED CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF THE FEDERAL FALSE CLAIMS ACT ARE APPLICABLE THERETO.

E. CERTIFICATION OF RESTRICTIONS ON LOBBYING.

This certification is required to be completed with the solicitation if the proposal exceeds $100,000.00. Failure to return this certification with the solicitation may result in a determination that the offer is non-responsive or non-responsible.

The Undersigned certifies to the best of its knowledge or belief that:

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

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

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

F. REVOLVING DOOR PROHIBITION.

The Undersigned has reviewed its list of employees (and subcontractors) involved in this procurement and it has no knowledge of any former Metra employee being involved in the solicitation process in violation of Section 4.05 of Metra's Bidding Regulations.

Section 4.05 states that all Metra Board members and non-contract personnel in specified positions are expressly prohibited, for a period of one (1) year after terminating employment with Metra, from engaging in any procurement activity with Metra. A "specified position" is one that is non-contract, is held for a period of six (6) months preceding such termination, is at a Grade P12 or above (including M Grades), and is not merely clerical or ministerial in nature. The prohibition includes, but is not limited to: lobbying the procurement process; specifying; bidding; or proposing bid, proposal, or contract documents on the part of the former employee or Board member, or in association with the former employee or Board member by or on behalf of any firm, partnership, association, or corporation affiliated with the former employee or Board member. The Undersigned certifies that the award and/or execution of a contract would not cause any violation of Section 4.05.

G. CONTINUING OBLIGATION TO INFORM METRA.

If Company acquires information after executing this certification that there may be an actual or apparent violation of any of the above Company shall promptly bring such information to the attention of Metra's procurement officer. Company shall thereafter cooperate with Metra's review and investigation of such information, and comply with any instruction it receives from Metra in regard to remedying the situation.

H. PENALTIES.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into the Contract pursuant to Metra's regulations and 31 U.S.C. 1352. A Company who makes a false statement, materials to the certification, is subject to termination for cause. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Company understands and agrees that the provisions of 31 U.S.C. 3801, et seq., apply to this certification and disclosure.

_____
(Print) Name of Company

By: _____ Date: _____
Signature of Person Making Affidavit (Undersigned listed above)

_____
(Print) Title of Person Making Affidavit

NOTARIZE HERE
Subscribed and sworn to before me
this _____ day of _____20____.

_____
Notary Public

CERTAIN SUBCONTRACTOR SIGNATURES REQUIRED ON NEXT PAGE

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SUBCONTRACTOR
DEBARMENT CERTIFICATION

NOTE: PRIMARY CONTRACTOR IS RESPONSIBLE FOR THIS FORM BEING SUBMITTED PRIOR TO AWARD. SUBCONTRACTOR(S) WITH SUBCONTRACTS OVER $25,000 MUST ALSO COMPLETE AND SIGN THE FOLLOWING:

STATE OF _____

COUNTY OF _____

The Undersigned represents that s/he is _____ ("Undersigned Subcontractor")
the (Print Name)

_____ of _____.
(Print "President" or Other Proper Title) (Print Name of Subcontractor Entity)

("Subcontractor" or "Undersigned Subcontractor") and is authorized to attest on behalf of himself/herself and

Subcontractor Entity by stating as follows:

1. As a subcontractor to a primary contractor for subcontracts over $ 25,000 the Undersigned Subcontractor certifies to the best of its knowledge and belief that the debarment statements in Section D above are truthful and accurate.
2. If Undersigned Subcontractor acquires information after executing this certification that there may be an actual or apparent violation of any of the above, Subcontractor shall promptly bring such information to the attention of Metra's procurement officer.
3. The provisions of Section I above are applicable.

_____
(Print) Name of Subcontractor Entity

By:_____ Date:_____
Signature of Person Making Affidavit (Undersigned above)

_____
(Print) Title of Person Making Affidavit

NOTARIZE HERE
Subscribe and sworn to before me
this_____day of_____20_____.

_____
Notary Public

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PROFESSIONAL SERVICES WITH ESTABLISHED GOAL OF 20 %

METRA'S DISADVANTAGED BUSINESS ENTERPRISE (DBE)

COMPLIANCE REQUIREMENTS

The Northeast Illinois Regional Commuter Railroad Corporation, d/b/a Metra, is required to take all necessary and reasonable steps to ensure non-discrimination in the award and administration of contracts. Therefore, the federal regulatory provisions of 49 C.F.R. Part 26 apply to this Contract.

I. DBE RESPONSIVENESS REQUIREMENTS

In order to be responsive, a proposer must make good faith efforts to meet the goal for Disadvantaged Business Enterprise ("DBE") participation in this contract. A proposer can accomplish this in either of two ways:

A. First, the proposer can commit to meet the goal with the DBEs that are certified by the Illinois Unified Certification Program (IL UCP), and properly complete and sign Schedule A or Schedule D (if a joint venture) of this Exhibit. Schedule A or D must list the name, description of DBE work scope, and dollar amount of participation of each, and only each, DBE that will participate in this Contract. (If the proposer is itself a DBE, the DBE proposer must indicate on Schedule A what scope of work its staff will actually perform outside of the work of any subconsultant, and the dollar amount of that work. If this amount does not satisfy the DBE goal, the DBE proposer must list the additional DBE subconsultant(s) that will satisfy the DBE goal, along with their work scope and agreed price); or

B. Second, if the proposer cannot meet the goal, the proposer must properly complete and sign Schedule A or D to the extent it will utilize DBE participation, and submit detailed and corroborating documentation evidencing its good faith efforts to achieve the contract goal.

The proposer must comply with section A or B of this Article I, and submit all documentation prior to or with submittal of the proposal. If the proposer fails to do so, its proposal will be deemed non-responsive and will be rejected. ANY DBE(s) LISTED ON SCHEDULE A AND/OR D MUST BE CERTIFIED BY THE IL UCP AT THE TIME OF THE BID OPENING.

II. DBE RESPONSIBILITY REQUIREMENTS

A. If the proposer is a DBE joint venture, a two-party signed joint venture agreement must be submitted to Metra for Metra's approval within five (5) working days after the proposal opening. This agreement must address the administrative, financial, and field responsibilities of each partner. The DBE participation must meet the criteria as set forth in the definitions (see page 5 of this Exhibit).

B. **Within five (5) working days of the date of a Pre-Award Notice from Metra, the apparent successful proposer must submit the following to the Office of DBE Administration: a completed and signed Schedule C, Confirmation of DBE Participation, from each firm listed on Schedule A or D; and**

C. **At Metra's discretion, Metra may extend the deadline for any of these responsibility requirements an additional three (3) working days. If the proposer fails to meet the initial or extended (if given) deadline, or fails to comply with any of the requirements or conditions stated herein, the proposer may be deemed non-responsible and its proposal may be rejected.**

D. Substitutions

The proposer cannot substitute any DBEs listed on Schedule A or D without prior written approval from Metra.

E. All companies with 15 employees or more doing business in the State of Illinois are required to have an Illinois Department of Human Rights Contract ID Number. Bidders may obtain a DHR Contract ID Number from the Public Contracts Division, Illinois Department of Human Rights, 100 West Randolph Street, 10th Floor, Chicago, Illinois 60601 (312) 814-4355, or access website: www.state.il.us/dhr. It is the proposer's responsibility to obtain this number and make it available upon request.

III. CONTRACT GOAL

IN ORDER TO COMPLY WITH FEDERAL REQUIREMENTS, METRA HAS ESTABLISHED, WHEREIN SUBCONTRACTING POSSIBILITIES EXIST, DBE PARTICIPATION FOR THIS CONTRACT OF AT LEAST 20 % OF THE TOTAL BASE PROPOSAL, WHICH INCLUDES ANY AND ALL ALLOWANCES; HOWEVER, THE CONSULTANT CANNOT COMMIT ANY SUBCONSULTANT TO ANY PORTION OF THE ALLOWANCE FOR PURPOSES OF THIS COMMITMENT. A DBE firm's participation in Metra contracts will only be credited towards DBE goals in the firm's specific area of IL UCP Certification/Specialty. Credit towards DBE goals in other areas requires additional support documentation for each of those other areas.

IV. GOOD FAITH EFFORTS

As stated before, in order to be responsive, a proposer must make good faith efforts to meet Metra's DBE goal in either of two ways. The proposer must either: 1) document how it will meet the goal by completing and signing Schedule A or D (if joint venture); or 2) document its attempt to meet the goal through detailed, corroborating evidence, i.e., demonstrate that it took *all necessary and reasonable steps* which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if the proposer was not fully successful. Metra will make a fair and reasonable judgment whether a proposer that did not meet the goal made adequate good faith efforts. Metra will consider the quality, quantity, and intensity of the different kinds of efforts that the proposer made. The efforts employed by the proposer should be those that one would reasonably expect a proposer to take if the proposer were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements.

The following is a list of types of action that Metra will consider as part of the evaluation of the proposer's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, or to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:

A. Soliciting through all reasonable and available means (e.g., attendance at pre-proposal meetings, if applicable, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the proposer might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. 1. Negotiating in good faith with interested DBEs. It is the proposer's responsibility to make a portion of the work available to DBE subconsultants and suppliers and to select those portions of the work or material needs consistent with the available DBE subconsultants and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the

work.

2. A proposer using good business judgment would consider a number of factors in negotiating with subconsultants, including DBE subconsultants, and would take into consideration a firm's price and capabilities, as well as contract goals. The fact that there may be some additional costs involved in finding and using DBEs, however, is not in itself sufficient reason for a proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a proposer to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Proposers are not, however, required to accept high quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The proposer's standing within the industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the proposer's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by Metra or the proposer.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women consultants' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

Metra will also take into account the performance of other proposers in meeting the contract goal. For example, when the apparent successful proposer fails to commit to the contract goal, but others commit to the goal, Metra will raise the question of whether, with additional reasonable efforts, the apparent successful proposer could have committed to the goal. If the apparent successful proposer fails to commit to the goal, but meets or exceeds the average DBE participation obtained by other proposers, Metra may view this, in conjunction with other factors, as evidence that the apparent successful proposer made good faith efforts.

Janice R. Thomas, Director, Metra's Office of DBE Administration, is responsible for determining whether a proposer has properly committed to meet the contract goal and whether a proposer who has not committed to meeting the goal has documented good faith efforts in order to be responsive. Metra must be satisfied that all information is complete and accurate, and adequately documents the proposer's good faith efforts before Metra commits to the performance of the contract by the successful proposer.

V. RECONSIDERATION

If Metra determines that a proposer is not responsive because it has not committed to meeting the contract goal or documented sufficient good faith efforts, the proposer has five (5) working days to request administrative reconsideration. The proposer must make this request in writing to the following Reconsideration Official:

Alexander D. Clifford
Executive Director
Metra
547 West Jackson Boulevard
Chicago, Illinois 60661-5717
(312) 322-6934

The Reconsideration Official will not have played any role in the original determination that the proposer did not document sufficient good faith efforts.

As part of this Reconsideration, the proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it committed to meeting the contract goal or made adequate good faith efforts to do so. The proposer will have the opportunity to meet in person with Metra's Reconsideration Official to discuss these issues. Metra will send the proposer a written decision after its reconsideration, explaining Metra's basis for finding that the proposer did or did not meet the goal or made adequate good faith efforts to do so. The result of this reconsideration process is not administratively appealable to the United States Department of Transportation.

VI. CALCULATING DBE PARTICIPATION

Metra will only count those DBEs that are certified by IL UCP towards a Metra contract goal.

A. Definitions

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

1. That is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals;

2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and

3. And it is currently certified by the Illinois Unified Certification Program (IL UCP).

"Good Faith Efforts" means efforts to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. This definition is not intended to relieve the proposer of any of the responsiveness (or responsibility) requirements listed in Article I of this Exhibit.

"Joint Venture" means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Small Business concern" means with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of The Small Business Act and Small Business Administration regulations implementing it (13 C.F.R. Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 C.F.R. §26.65(b).

"Socially and Economically Disadvantaged" individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

    a. *"Black Americans,"* which includes persons having origins in any of the Black racial groups of Africa;

    b. *"Hispanic Americans,"* which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

    c. *"Native Americans,"* which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

    d. *"Asian-Pacific Americans,"* which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Island, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

e. *"Subcontinent Asian Americans,"* which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Island, Nepal or Sri Lanka;

f. *"Women"*; and

g. Any additional groups whose members are designated as socially and economically disadvantaged by the United States Small Business Administration (SBA), at such time as SBA designation becomes effective.

B. General Conditions

Metra will use the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Metra will make its certification decision based on the facts as a whole.

As a partner in the Illinois Unified Certification Program (IL UCP), Metra can provide, upon request, a directory of IL UCP DBE Firms. The directory will also be available electronically (www.metrarail.com).

As required by 49 C.F.R. Part 26.55, Metra counts DBE participation toward overall and contract goals as follows:

1. When a DBE participates in a contract, Metra counts only the value of the work actually performed by the DBE toward the DBE goal. Participation will only be credited in the DBE's area of specialization. Credit for work in other areas requires additional support documentation for each of those areas.

2. Metra counts the entire amount of that portion of a contract that is performed by the DBE's own forces. This includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subconsultant purchases or leases from the prime consultant or its affiliate).

3. Metra counts the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided Metra determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

4. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

5. When a DBE performs as a participant in a joint venture, Metra counts a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

6. Metra counts expenditures to a DBE toward DBE goals only if the DBE is performing a commercially useful function on this Contract.

   a. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, Metra must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of work, and other relevant factors.

   b. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, Metra must examine similar transactions, particularly those in which DBEs do not participate.

   c. If a DBE firm acting as a prime consultant and/or as a subconsultant under this Contract does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, Metra must presume that it is not performing a commercially useful function.

   d. Metra uses the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1). The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals;

(2). The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract;

(3). The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs;

(4). The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract;

(5). The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease agreement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE; and

(6). For purposes of this subparagraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

e. If a DBE is presumed not to be performing a commercially useful function as provided in these requirements, the DBE may present evidence to rebut this presumption. Metra may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

f. Metra's decisions on commercially useful function matters are subject to review by the Federal Transit Administration, but are not administratively appealable to United States Department of Transportation.

7. Metra counts expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

a. If the materials or supplies are obtained from a DBE manufacturer, Metra counts one hundred percent (100%) of the cost of the materials or supplies toward DBE goals.

b. For purposes of these requirements, a **manufacturer** is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

c. If **materials or supplies** are purchased from a DBE regular dealer, Metra counts **sixty percent (60%)** of the cost of the materials or supplies toward DBE goals.

d. For purposes of these requirements, a **regular dealer** is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(1). To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(2). A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the persons both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(3). Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.

(4). With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, Metra counts the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided Metra determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar service. Metra will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

8. Metra will not count toward its overall goal the dollar value of work performed under a contract by a firm after it has ceased to be certified.

9. Metra will not count the participation of a DBE subconsultant toward the prime consultant's DBE achievements or Metra's overall goal until the amount being counted toward the goal has been paid to the DBE.

C. Directory

A DIRECTORY OF METRA CERTIFIED DBEs IS AVAILABLE UPON REQUEST AT THE OFFICE OF DBE ADMINISTRATION. THE TELEPHONE NUMBER IS (312) 322-6323.

Additional assistance in locating DBE firms available from:

Chicago Urban League
4510 S. Michigan Chicago, Illinois 60653
(773) 285-5800

Black Contractors United (BCU)
400 W. 76th Street, Suite 200 Chicago, Illinois 60620
(773) 483-4000

Hispanic American Contractors Industry Association (HACIA)
901 W. Jackson, Suite 205, Chicago, Illinois 60607
(312) 666-5910

Association of Asian Contraction Enterprises
333 North Ogden, Chicago, Illinois 60607-1177
(312) 563-0746

Chicago Minority Supplier Development Council (CMSDC)
105 W. Adams 2300, Chicago, Illinois 60603
(312) 755-8880

Cosmopolitan Chamber of Commerce
203 N. Wabash, Suite 518 Chicago, Illinois 60601
(312) 499-0611

Federation of Women Contractors
5650 S. Archer Avenue, Chicago, Illinois 60638
(312) 360-1122

African American Contractors Association (AACA)
3706 S. Indiana Avenue, Chicago, IL 60653
(312) 915-5960 x14

Women's Business Development Center
8 South Michigan Avenue, Suite 400, Chicago, Illinois 60603
(312) 853-3477

The Illinois Hispanic Chamber of Commerce
111 W. Washington Suite 1660 Chicago, IL 60602
(312) 425-9500

Latin American Chamber of Commerce
3512 West Fullerton Avenue, Chicago, Illinois 60647-2418
(773) 252-5211

VII. CONTRACT PERFORMANCE

A. Prior to Notice to Proceed

Subcontracts

Within thirty (30) working days after the Notice of Award of the contract, the prime Consultant must submit copies of **SIGNED** contracts between the prime Consultant and the DBEs to the Office of DBE Administration.

UNTIL THE OFFICE OF DBE ADMINISTRATION RECEIVES THESE SUBCONTRACTS, A LETTER TO PROCEED WILL NOT BE ISSUED.

IN ADDITION, FAILURE TO PROVIDE THE SUBCONTRACT(S) TO THE OFFICE OF DBE ADMINISTRATION WITHIN THE TIME REQUIRED SHALL CONSTITUTE A BREACH OF THIS CONTRACT, AND UPON SUCH BREACH, METRA MAY TERMINATE THIS CONTRACT AND/OR EXERCISE OTHER SANCTIONS, PENALTIES, OR REMEDIES AS ALLOWED BY LAW OR EQUITY, AND AS METRA DEEMS APPROPRIATE.

B. Contract Performance

1. Contract Invoices

The Consultant must submit two (2) copies of monthly contract invoices, including support documentation, to the Office of DBE Administration at the same time they are submitted to Metra's Accounts Payable.

These forms can be found in Metra's Quality Management Program (QMP). To access the current version of the following Metra Third Party Contractor Quality Management Plans:

- Open your Web Browser, type in ftp://ftp.metrarr.com in the address line and hit 'Enter'.
- Type the following for the 'User Name' and 'Password' and click 'logon'

User Name: metragrants **Password:** M3tr@u9r3

- Click on the applicable Quality Management Plan:

1. Contractor Construction QMP (CCQMP)
2. Consultant Design QMP (CDQMP)
3. Construction/Project Management QMP (CMQMP)

to access its contents and the 'ReadMeFirst.pdf' file, which provides the appropriate instructions to copy and save its contents.

2. Copies of canceled checks (both sides), wire transfers or other forms of payments to DBEs must be provided on a monthly basis. The checks must be payment for the individual Metra Contract being reports only, not a combination of payment to several contracts.

C. Postings

The following items must be posted on the job site and protected from the weather:

1. The Federal EEO Policy Statement which may be obtained by calling (800) 669-3362;

2. The Consultant's EEO Policy Statement signed by the Consultant's Chief Executive Officer;

3. A poster of OSHA Safety Rules which may be obtained by calling (312) 793-1966; and

4. A posting of the nearest trauma center.

Metra may make on-site visits from time to time during the course of this Contract to ensure compliance with the requirements set forth herein.

Metra may require verification of any commitment represented to us in connection with the Consultant's use of DBE businesses in the performance of this Contract.

Metra reserves the right to review the certified payrolls for the Consultant and all consultants working on this Contract.

Further, if problems should arise with respect to the Consultant's subcontract with any DBEs, please contact Metra immediately so that Metra may be apprised and lend whatever assistance Metra can in solving the problem.

D. Breach Of Contract

Failure to abide by any of the DBE participation requirements in this Contract or any requirements set forth in 49 C.F.R. Part 26.41 shall constitute a breach of this Contract, and upon such breach, Metra may terminate this Contract and/or exercise other sanctions, penalties, or remedies as allowed by law or equity and as Metra deems appropriate.

E. Substitution of DBE Firms

The Consultant must obtain prior written approval from Metra in order to substitute any DBE, which Metra has approved for participation in this Contract. In addition, the Consultant cannot terminate for convenience a DBE listed on Schedule A (or an approved substitute DBE firm), and then perform the work of the terminated subcontract with its own forces or those of an affiliate or substitute firm, without Metra's prior written consent. Metra will require the Consultant to make good faith efforts to replace a DBE that is terminated, or whose work scope has changed, or has otherwise failed to complete its work on this Contract with another certified DBE, to the extent needed to meet the Contract goal. Metra will require the Consultant to notify the DBE Director immediately and provide reasonable documentation of the DBE's inability or unwillingness to perform its subcontract. In this situation, the Consultant must obtain Metra's prior approval of a substitute DBE, and must provide a copy of the new subcontract with the substitute DBE, or documentation of good faith efforts to substitute the initial DBE with another DBE. In the situation where the DBE's work scope has changed by Metra, the Consultant must immediately notify Metra's DBE Director to address a revised "Commitment to DBE Participation."

F. Prompt Payment

The Consultant agrees to pay each subconsultant for satisfactory performance of its subcontract no later than fifteen (15) calendar days from the receipt of such payment that the Consultant receives from Metra. The Consultant agrees further to return funds it has retained to each subconsultant within fifteen (15) calendar days after the subconsultants work is satisfactorily completed. Any failure to comply with this Section will be in material breach of this Contract, and Metra reserves all its rights in law and equity for such breach. In addition, such breach will be taken into consideration for the Consultant's responsibility status for future contracts with Metra. This clause applies to both DBE and non-DBE prime consultants and subconsultants. Metra reserves the right to review the certified payrolls for all consultants working on this Contract.

G. Records

A record of all activities to demonstrate good faith efforts must be kept by the Consultant and made available to Metra upon request.

H. Contract Assurance

The Consultant makes the following assurance and agrees to include the assurance in each subcontract that the Consultant signs with a subconsultant:

The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of federally assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or other such remedy as Metra deems appropriate.

VIII. REFERENCES

All references to Metra's DBE Office mean:

Janice R. Thomas, Director
Office of DBE Administration
Metra
547 West Jackson Boulevard
Chicago, Illinois 60661-5717

Metra

SCHEDULE A
PRIME CONSULTANT
COMMITMENT TO DBE SUBCONSULTANT PARTICIPATION
PROFESSIONAL SERVICES

NAME OF PRIME PROPOSER: _____ NAME OF PROJECT: USDOT FTA Best Practices Training and Consulting Services

NOTE: THE PROPOSER MUST COMPLETE, AND RETURN THIS FORM BEFORE OR WITH THE PROPOSAL SUBMITTAL IN ORDER TO BE RESPONSIVE. **Please review pages 7 through 11 of the DBE Compliance Requirements, "Section B. General Conditions", regarding counting DBE Participation towards the DBE Goal.**

ALSO NOTE that if the proposer is itself a DBE, the DBE proposer must indicate the scope of work its forces will actually perform (outside of the work of any subconsultant) and the dollar amount of that work. If this amount does not satisfy the DBE goal, the DBE proposer must list the additional DBE subconsultant(s) that will satisfy the DBE goal, along with their work scope and agreed price, on this Schedule A.

Final total DBE participation is measured against the total base proposal plus any change orders; furthermore DBE participation is only counted for the contract in which it is awarded.

DBE Goal 20 % Any DBE listed on Schedule A and/or D must **be certified** by the IL UCP at the time of the bid opening.

NAME OF DBE CONSULTANT	*CONTACT PERSON*	*TELEPHONE NUMBER*	*SCOPE OF WORK TO BE PERFORMED PER IL UCP DBE CERTIFICATION*

The Consultant must obtain prior approval from Metra in order to make any substitutions for any DBE firms.

I hereby certify that arrangements have been made for the foregoing work with the listed DBE subconsultant(s). I further understand that any willful falsification, fraudulent statement, or misrepresentation will result in appropriate sanctions, which may include debarment and/or prosecution under applicable State and Federal Laws.

_____ _____ _____

Print Name and Title Signature **< TO BE SIGNED BY PRIME CONSULTANT>** Date

DBE participation from any other contract will not count towards the DBE goal on this Contract. The DBE(s) that you list on this Schedule A must be used to reach this Contract's goal.

Metra

SCHEDULE C
CONFIRMATION OF DBE PARTICIPATION
PROFESSIONAL SERVICES

Metra RFP No. _____ Name of Project **USDOT FTA Best Practices Training and Consulting Services**

_____, at _____
Name of DBE Firm Address

hereby certifies that it is providing the following services for this Contract:

_____

_____

_____

as provided in Schedule A of _____

_____'s proposal.
Name of Prime Consultant

I further understand that any willful falsification, fraudulent statement, or misrepresentation will result in appropriate sanctions, which may include debarment and/or prosecution under applicable State and Federal Laws.

_____ _____ _____
Print Name and Title Signature **<MUST BE SIGNED BY DBE>** Date

DBE participation from any other contract will not count towards the DBE goal on this Contract.

Metra

SCHEDULE D
COMMITMENT TO DBE JOINT VENTURE
PROFESSIONAL SERVICES

NAME OF PRIME
JOINT VENTURE: _____ NAME OF PROJECT: USDOT FTA Best Practices Training and Consulting Services

NOTE: THE PROPOSER MUST COMPLETE, AND RETURN THIS FORM BEFORE OR WITH THE PROPOSAL SUBMITTAL IN ORDER TO BE RESPONSIVE. **Please review pages 7 through 11 of the DBE Compliance Requirements, "Section B. General Conditions", regarding counting DBE Participation towards the DBE Goal.**

ALSO NOTE that if the proposer is itself a DBE, the DBE proposer must indicate the scope of work its forces will actually perform (outside of the work of any subconsultant) and the dollar amount of that work. If this amount does not satisfy the DBE goal, the DBE proposer must list the additional DBE subconsultant(s) that will satisfy the DBE goal, along with their work scope and agreed price, on this Schedule A.

Final total DBE participation is measured against the total base proposal plus any change orders; furthermore DBE participation is only counted for the contract in which it is awarded.

DBE Goal 20 % Any DBE listed on Schedule A and/or D must be certified by the IL UCP at the time of the bid opening.

NAME OF DBE CONSULTANT	*CONTACT PERSON*	*TELEPHONE NUMBER*	*SCOPE OF WORK TO BE PERFORMED PER IL UCP DBE CERTIFICATION*

A JOINT VENTURE AGREEMENT MUST BE SUBMITTED PRIOR TO CONTRACT AWARD

The Consultant must obtain prior approval from Metra in order to make any substitutions for any DBE firms.

I hereby certify that arrangements have been made for the foregoing work with the listed DBE subconsultant(s). I further understand that any willful falsification, fraudulent statement, or misrepresentation will result in appropriate sanctions, which may include debarment and/or prosecution under applicable State and Federal Laws.

Print Name and Title	Signature <TO BE SIGNED BY JOINT VENTURE CONSULTANT>	Date
Print Name and Title	Signature <TO BE SIGNED BY JOINT VENTURE CONSULTANT>	Date

DBE participation from any other contract will not count towards the DBE goal on this Contract. The DBE(s) that you list on this Schedule D must be used to

CIVIL RIGHTS REQUIREMENTS (TITLE VI ASSURANCE):

The Contractor agrees to comply with and assures compliance by its sub-contractors at any tier with the following Civil Rights Requirements. The Contractor agrees to insure these requirements must be included within all contracts to its sub-contractors at any tier. Failure to implement or follow the provisions set forth in this Exhibit may result in the Contractor being placed in breach of the Contract terms and may result in Contract termination.

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

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

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

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C.§ 623, and Federal transit law at 49 U.S.C.§ 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

Metra

CONSULTANT INSURANCE REQUIREMENTS

REQUISITION NUMBER R49109

EVENT FTA Best Practices Training and Consulting Services

Effective concurrently with the commencement of the work, the contractor/vendor shall obtain and maintain throughout the life of the work, the insurance coverage as noted below. Coverage must meet the requirements that follow on pages 1 to 3 of this Exhibit. With the exception of Professional Liability, all coverage needs to be written on an occurrence form and with an insurer carrying a minimum AM Best rating of at least A-/VIII.

TYPE OF COVERAGE	AMOUNT REQUIRED
1. WORKERS' COMPENSATION: Coverage A - Statutory Coverage B - $ 1,000,000	$ 1,000,000 Limits of Liability
2. COMPREHENSIVE GENERAL LIABILITY (BROAD FORM): Bodily Injury Liability & Property Damage Liability (combined)	$ 1,000,000 Each Occurrence $ 2,000,000 Aggregate
3. EXCESS COMPREHENSIVE GENERAL LIABILITY-EXCESS OF PRIMARY LIMITS (1), (2) and (4) Bodily Injury Liability & Property Damage Liability (combined)	$ 1,000,000 Each Occurrence $ 2,000,000 Aggregate
4. AUTOMOBILE LIABILITY: Bodily Injury Liability & Property Damage Liability (combined)	$ 1,000,000 Combined Single Limit
5. PROFESSIONAL LIABILITY:	$ 2,000,000 Each Occurrence $ 2,000,000 Aggregate
6. RAILROAD PROTECTIVE LIABILITY: Bodily Injury Liability & Property Damage Liability (combined)	$ N/A Each Occurrence $ N/A Aggregate
7. OTHER INSURANCE	$ N/A

Additional Insureds shall be as follows: The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra as now exists or may hereafter be constituted or acquired, and the Regional Transportation Authority, an Illinois municipal corporation.

METRA'S INSURANCE REQUIREMENTS APPLICABLE TO ALL POLICIES:

-Include a waiver of subrogation, thereby waiving your rights of subrogation against Metra and any additional insureds.

-Include the Additional Insured Endorsement for all coverages including products and completed operations.

-Be primary and non-contributory on all coverages.

-Not carry a deductible greater than $10,000. All deductibles applicable to the insurance coverage shall be borne by the contractor/vendor. The certificate of insurance shall clearly state how defense costs (also known as "allocated loss adjustment expenses") shall apply in terms of the deductible and the insurance limits. (SIR programs are prohibited, absent prior approval by Metra's Risk Management Department.)

-All subcontractors retained or hired for the work shall be required to maintain limits and term equivalent to those required of the prime contractor.

-All insurance policies must specify that they are not subject to cancellation, non-renewal, material change or reduction in coverage unless a minimum of sixty (60) days prior notification is given by the insurer, except for non-payment of premium wherein a ten (10) day notice will apply. Contractor/Vendor will immediately notify Metra of the cancellation, non-renewal, material change or reduction in coverage of any required insurance policy. Such notice shall be sent certified mail to Metra, care of Director of Risk Management, 547 W. Jackson, Suite 1500, Chicago, IL 60661.

-In no event, shall the failure by Metra to receive certificates of insurance required hereunder, or to receive them by the date(s) required hereunder, be construed as a waiver of the contractor/vendor's obligation to obtain the required insurance coverages. Failure by Metra to demand any certificate of insurance or other evidence of full compliance with the insurance requirements set forth herein, or failure by Metra to identify a deficiency in the evidence provided, shall not be construed as a waiver of the obligation to procure or maintain the insurance required hereunder. The acceptance of delivery by Metra of any certificate of insurance does not constitute approval or agreement that the insurance requirements have been met or that the insurance policies identified in the certificates of insurance are in compliance with such requirements.

METRA'S INSURANCE REQUIREMENTS – SPECIFIC CONDITIONS

Commercial General Liability Insurance

The coverage is to be no less restrictive that the latest filed Insurance Services Office (ISO) occurrence form.

The CGL policy shall include the following coverage limits when limits are indicated:

$2,000,000 per occurrence for completed operations & products liability
$2,000,000 per occurrence for personal injury and advertising injury
$1,000,000 per occurrence damage to rented premises

Automobile Liability Insurance

The Automobile policy shall include the following additional coverage limits:

Include "any" auto (i.e. all autos owned by the contractor/vendor as well as hired and non-owned autos used by the contractor/vendor and autos used by the contractor/vendors' employees while on Metra property).

$25,000 for Medical Payments
$500,000 for Property Damage (if not combined in single limit)

Workers Compensation and Employers Liability Insurance

Workers Compensation Insurance coverage should be at statutory limits and include where required:

-Other States Insurance
-USL&H Insurance
-Voluntary Compensation Insurance

As a minimum, the Employers Liability policy shall include coverage limits of:

$1,000,000 for bodily injury by accident
$1,000,000 for bodily injury by disease, each employee
$1,000,000 aggregate liability

Contact Information:

For additional information please contact Nancy McIntosh at **312-322-7073.**

EXHIBIT 1F

PROFESSIONAL AND CONSULTING SERVICES AGREEMENT

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
D/B/A METRA
547 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60661

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AGREEMENT

FOR PROFESSIONAL AND CONSULTING SERVICES

This Agreement is entered into this_____day of _____, _____ in Chicago, Illinois, by and between the Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra, Metropolitan Rail ("**Metra**"), a public corporation under Illinois law, and _____("**Consultant**"), having offices located at _____Consultant and Metra are sometimes collectively referred to as **"Parties."** In consideration of the promises and agreements set forth, the Parties agree:

1. **SCOPE AND DESCRIPTION OF SERVICES.**

Consultant will perform the following services ("**Work**"): _____

_____

as set forth in Exhibit 2, attached hereto.

2. **COMPENSATION.**

Metra agrees to pay, and Consultant agrees to accept as full payment for the Work, the prices set forth in Proposal attached as Exhibit 2 of this Agreement. Consultant shall be paid only for the actual Work performed at the prescribed rates during the preceding billing period, not to exceed the percentage of the Work completed as of the end of the billing period. The full payment for the Work shall not exceed $_____ ("**Total Price**"). The Total Price also includes the cost of all applicable taxes (where Metra is not exempt), bonds, if required, and other charges of every kind and nature. The Total Price shall not include, and Metra shall not pay, taxes or fees from which Metra is exempt. Metra is exempt from various federal taxes, all state and unit of local government taxes, and registration and license fees. Consultant shall promptly notify Metra, and afford it the opportunity before payment of any taxes, to contest said claims in the manner and to the extent it may elect, and to settle or satisfy such claims. Consultant shall submit all invoices on Metra Form #B100R107, which is incorporated into and made a part of this Agreement, along with all appropriate support documents, for all amounts to be paid by Metra under this Agreement. Invoices must be addressed to the "Accounts Payable Section" for payment and must show Metra Contract No. _____ and Account No._____. Metra will pay complete and accurate invoices within thirty (30) days of receipt. If Consultant fails to follow the instructions under this paragraph, or any instructions subsequently issued for its invoices, Metra may, at its sole discretion, reject Consultant's invoices for that billing period, and withhold payment of those invoices until such billing period as Consultant has complied with the requirements of this paragraph. An

incomplete or inaccurate invoice will be deemed received only when completed and corrected to Metra's satisfaction. However, if the omission or inaccuracy is, in Metra's sole judgment, minor and inconsequential, Metra will use reasonable efforts to ascertain and pay the complete and accurate portion of the invoice. Payments are subject to audit and inspection as set forth in Section 9.B below.

3. PERFORMANCE OF THE WORK.

The term of this Agreement shall be from the date of execution until _____ _____.

A. NOTICE TO PROCEED. Consultant will, within fifteen (15) business days after Metra's issuance of a notice of award letter informing Consultant of its execution of this Agreement ("Notice of Award"), submit to Metra: (1) certificates of insurance from insurance carriers satisfactory to Metra, and in form, substance, and detail satisfactory to Metra; (2) if applicable, the signed subcontracts with DBE subconsultants; (3) a schedule for the project with submittal milestones; and (4) any other document stated elsewhere in this Agreement that is required prior to Metra's notification to Consultant to start the Work ("Notice to Proceed").

B. SCHEDULE.

1. Submission of Schedule. Time is of the essence and delays may have a direct and indirect cost to Metra's operations. As a condition to issuing the Notice to Proceed, Consultant shall submit a schedule, acceptable to Metra, showing submittal milestones for the Work. Consultant must adhere to and complete all Work by the time stated in the schedule approved by Metra. Consultant shall commence the Work promptly after receiving a Notice to Proceed from Metra.

2. Monthly Progress Reports. Consultant's schedule shall be updated and submitted to Metra in writing no less than monthly. Such report shall state whether or not the Work is progressing within schedule. If Consultant determines that the Work and milestones are not progressing within schedule, Consultant shall notify Metra of the reasons for the delay and identify each delayed activity (including duration and interrelationships between activities). In addition to any other remedy afforded to Metra, failure to submit monthly reports will be a default of this Agreement and is grounds for Metra to withhold payments until such reports are submitted.

3. Contents of Reports. Consultant shall not make any changes to the approved schedule, including the milestones, when reporting its progress in the monthly reports. The report information shall include the approved schedule dates and milestones and the following additional information:

a. Actual start dates;
b. Actual finish dates;
c. Activity percent completion;
d. Remaining duration of activities in progress;
e. Identified or highlighted critical activities and problem areas;
f. Summary of Work accomplished during the past update period;
g. Analysis of time lost/gained during the update period; and
h. Recommended solutions to current problems.

4. Recovery Schedule. In the event Consultant, in the reasonable judgment of Metra, is failing to meet the approved schedule, including milestones, Consultant shall submit a recovery schedule within seven (7) days of such notice from Metra. The recovery schedule shall set forth a plan to eliminate the schedule slippage. The plan must be specific to show the methods to achieve the recovery of time, i.e. increasing manpower, overtime, weekend work, employing multiple shifts. All costs associated with implementing the recovery schedule shall be borne by the Contractor, unless otherwise agreed to by Metra in writing. Metra will review the recovery schedule within 14 days of receipt. If the recovery schedule is rejected, Consultant must submit a revised schedule within 7 business days of rejection. In the event Consultant fails to submit an acceptable revised schedule, Metra reserves the right to terminate this Agreement for default or convenience.

5. Revised Schedule. Subject to equitable adjustments, Metra may require Consultant to revise the schedule for the following:

a. Changes in the Work;
b. Re-phasing of a project or any phase;
c. A change in the duration of the project, phase, or funding; and

d. Acceleration of the project or phase.

C. **DELAY.** If Consultant is delayed in the performance of the Work, Consultant must immediately, upon receiving knowledge of such delay, give written notice to Metra and request an extension of time for performance or completion of the Work. Metra shall examine the request and determine if Consultant is entitled to an extension of time because of an excusable delay. Excusable delays include acts of God or a public enemy, acts of Metra or a funding agency not resulting from Consultant's unacceptable services, fire, strikes, flood, and the like. No claim for damages shall be made by either party for excusable delays. Metra shall notify Consultant of Metra's decision in writing and that decision shall be final and binding. Delays that are not beyond Consultant's reasonable control are a material breach of this Agreement. Such delays may also affect Consultant's status as a responsible proposer or Metra's evaluation of Consultant's performance for future work for Metra. In any event, Consultant shall continue to perform the Work to the extent possible under the circumstances, and resume normal performance as soon as possible, whether or not an extension is granted. Metra shall not be obligated to grant extensions, whether or not excused.

D. **RESPONSIBILITY FOR AGENTS AND EMPLOYEES.** Consultant represents that it shall utilize the services of individuals skilled in the profession for which they are performing services for this Agreement. In the event that Metra determines, in its sole discretion, that any individual performing services for Consultant under this Agreement is not providing such skilled services, it shall notify Consultant and Consultant shall promptly replace that individual.

E. **LICENSES AND PERMITS.**

1. Consultant, or its employees who would perform services requiring a license, shall have and maintain any required license. With the prior written consent of Metra, Consultant may meet the license requirement through use of a subconsultant.

2. To the fullest extent possible under applicable law/codes, Consultant shall apply for and obtain all permits for the project being designed. In those instances where the Consultant is prohibited by applicable laws or codes from obtaining such permits, Consultant shall perform all preliminary work for permit applications to assist Metra, its contractor(s), or others (on behalf of Metra) to obtain the permit in the shortest period of time. Consultant shall cooperate with and assist Metra's contractor (awarded to construct the project) in reviewing and submitting permit applications, and obtaining permits.

F. **PROFESSIONAL AND PERSONAL SERVICES.** This Agreement is for professional and personal services. Metra has relied on representations made by Consultant on who will perform certain work either directly by Consultant or through a named subconsultant. Therefore, any subconsultant, outside associate, personnel, or consultant required by Consultant in connection with the services covered by this Agreement will be limited to those subconsultants, outside associates, personnel, and consultants who were specifically identified and agreed to during negotiations. If Consultant is unable to secure or retain such persons named by Consultant, Consultant shall not be relieved of its obligations to complete performance. Consultant shall obtain Metra's written consent before making any substitution for these or any other subconsultants, outside associates, personnel, or consultants. Consultant shall include this provision in its contracts with its first tier subconsultants to prevent further subcontracting without Metra's written consent.

G. **PAYMENT OF SUBCONSULTANTS.** Consultant agrees to pay each subconsultant under this Agreement, in proportion to the work completed by each one, no later than 15 days from the receipt of each payment Consultant receives from Metra. Consultant further agrees to return retainage payments to each subconsultant within 15 days after the subconsultant's work is completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from Metra. Consultant must resolve all payment disputes with its subconsultants expeditiously. If Consultant fails to pay its subconsultants in a timely manner, or fails to expeditiously resolve any payment disputes with its subconsultants, such failure may constitute a material breach of this Agreement.

H. **ASSIGNMENT.** Assignment or delegation of this Agreement by Consultant without the prior written approval of Metra is a material breach of this Agreement. This Agreement shall be binding on, and inure to the benefit of, the respective successors, assigns, heirs, and personal representatives of Metra and Consultant. Any successor to Consultant under this Agreement must be approved in writing by Metra, which approval Metra may grant or deny in its sole discretion. Any successor must agree to perform all terms, conditions, and requirements of this Agreement as a condition precedent to such succession.

4. **DOCUMENTS FORMING THIS AGREEMENT.**

All written information which Consultant has furnished to Metra in connection with Metra's request for proposals forms a part of this Agreement and the basis on which Metra has decided to award this Agreement to Consultant. Consultant hereby represents to Metra that all facts, plans, or promises contained therein, other than such as may be contradicted by or expressly superseded by Consultant's offer or last offer, are true, and Consultant acknowledges that Metra is entitled to rely thereon. This Agreement constitutes the entire Agreement between the Parties. All

amendments to this Agreement must be in writing and executed by the authorized officers of each party. The Parties further agree that this Agreement consists of the following:

1. This contract document and each of the following documents attached hereto or incorporated by reference into this Agreement:
   2. EXHIBIT 1 -
   3. EXHIBIT 2 -
   4. EXHIBIT 3 -
   5. EXHIBIT 4 -

5. TERMINATION.

Metra may terminate this Agreement at any time, with or without cause, by giving written notice to Consultant at the address specified above. Termination shall be effective upon receipt of such notice by Consultant through actual delivery in person, fax, or regular or certified mail.

A. **CONVENIENCE.** If Metra terminates this Agreement other than for breach by Consultant, Metra agrees to pay Consultant, and Consultant agrees to stop Work as stated in the notice and accept as its sole remedy, Consultant's unpaid costs expended to date of termination. After receipt of a notice of termination and except as otherwise directed by Metra, Consultant shall: (1) stop Work under this Agreement on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under this Agreement as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by such notice; (4) account for any property in its possession belonging to Metra, and dispose or return of such property as directed by Metra; and (5) generally act in such manner as is necessary to mitigate and minimize the amounts payable by Metra hereunder.

B. **BREACH.** Unless Consultant cures defaults within seven (7) calendar days after receipt of written notification of such default, Consultant shall be in total breach of this Agreement. If Metra terminates this Agreement for breach by Consultant, Consultant shall be liable for and reimburse Metra on demand for all damages incurred by Metra, including but not limited to, incidental and consequential damages, and Metra's cost for having the Work completed by another consultant or with Metra's own employees. In addition, Metra expressly reserves all of its rights and remedies under law and equity for Consultant's breach. If, after Metra terminates this Agreement for breach or default, it is determined that Consultant 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 Metra under Section 5.A. above.

6. **INSURANCE.**

Consultant shall obtain and continuously maintain the professional liability insurance specified in the insurance exhibit to the Request for Proposals covering all claims whenever made, arising out of this Agreement and/or performance of the Work. Certificates of this insurance and an additional insured endorsements shall be furnished from time to time to Metra upon its request. Metra is not obligated to issue a Notice to Proceed under Section 3.A until Metra has determined that the requirements of this Section have been satisfied.

7. **ETHICS.**

A. **NON-COLLUSION.** Consultant warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of Metra, or to any other consultant, for the purpose of obtaining this Agreement.

B. **PROHIBITED INTERESTS.**

1. No board member, officer, or employee of Metra shall have any interest, direct or indirect, in this Agreement or its proceeds during his/her tenure.

2. No member or delegate to the Illinois General Assembly or the Congress of the United States shall be admitted to any share or part of this Agreement, or to any benefit arising from it.

C. **AFFIDAVIT/CERTIFICATIONS.** Consultant reaffirms the information contained in the Affidavit/Certification exhibit and, to the best of Consultant's knowledge, the exhibit is still accurate. If Consultant becomes aware, at any point throughout the duration of this Agreement, that any statement or information provided by the Affidavit/Certification exhibit is inaccurate or is no longer true, Consultant shall immediately notify Metra and identify the inaccurate or false statement or information.

D. **STATE OF ILLINOIS GIFT BAN ACT.** Consultant shall comply with the applicable provisions of the State of Illinois Gift Ban Act, 5 ILCS 430 (Article 10) et seq., and refrain from providing gifts to Metra's employees in violation of Metra's Gift Ban Policy, which is incorporated herein by reference.

E. **CONFLICTS OF INTEREST.** Consultant agrees that it and its subconsultants are under a continuing obligation to disclose any real, potential, or apparent personal or organizational conflict of interest to Metra. Metra employees are prohibited from participating in the selection, award, or administration of a contract or subcontract supported by Metra, federal, or other grant funds if a real or apparent conflict of interest would be involved. In addition,

unless approved in writing by Metra and/or any applicable Funding Agencies (as defined below), no contract or subcontract for the construction of a project or the acquisition of additional services or products related to this Agreement shall be awarded to any firm that would create, as determined by Metra in its sole discretion, any real, potential, or apparent personal or organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract or subcontract may, without some restriction, result in an unfair competitive advantage or impair the objectivity of Consultant in performing the contract work. This clause shall survive the termination of this Agreement.

8. EMPLOYMENT AND CIVIL RIGHTS.

A. ILLINOIS EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS. In the event of Consultant's non-compliance with the provisions of this equal employment opportunity clause, the Illinois Human Rights Act ("**Act**"), or the rules and regulations of the Illinois Department of Human Rights ("**Department**"), Consultant may be declared ineligible for future contracts or subcontracts with the State of Illinois, or any of its political subdivisions, or municipal corporations; and this Agreement may be canceled or voided in whole or in part; and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Agreement, Consultant agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate action to rectify such underutilization;

2. That, if it hires additional employees in order to perform this Agreement or any portion thereof, it will determine the availability (in accordance with the Department's rules and regulations) of minorities and women in the area(s) from which it may reasonably recruit, and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized;

3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service;

4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of Consultant's obligations under the Act and the Department's rules and regulations. If any such labor organization or representative fails or refuses to cooperate with Consultant in its efforts to comply with such Act and rules and regulations, Consultant will promptly so notify the Department and Metra, and will recruit employees from other sources when necessary to fulfill its obligations thereunder;

5. That it will submit reports as required by the Department's rules and regulations, furnish all relevant information as may from time to time be requested by the Department or Metra, and in all respects comply with the Act and the Department's rules and regulations;

6. That it will permit access to all relevant books, records, accounts, and work sites by personnel of Metra and the Department for purposes of investigation to ascertain compliance with the Act and the Department's rules and regulations;

7. That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subconsultant in the same manner as with other provisions of this Agreement. Consultant will be liable for compliance with applicable provisions of this clause by such subconsultants, and further it will promptly notify Metra and the Department in the event any subconsultant fails or refuses to comply therewith. In addition, Consultant will not utilize any subconsultant declared by the Department to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations; and

8. That Consultant will have written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under state law; (iii) a description of sexual harassment, utilizing examples; (iv) Consultant's internal complaint process including penalties; (v) the legal recourse, investigative, and complaint process available through the Department and the Human Rights Commission

("Commission"); (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of the Act. A copy of the policies shall be provided to the Department upon request.

B. FEDERAL CIVIL RIGHTS REQUIREMENTS. The requirements of this Section flow down to Consultant and it's subconsultants at every tier.

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

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

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

Consultant agrees to comply with any implementing requirements FTA may issue.

b. Age - In accordance with 29 U.S.C. § § 621 et seq., 42 U.S.C. §§ 6101 et seq., and Federal transit law at 49 U.S.C. § 5332, Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Consultant agrees to comply with any implementing requirements FTA may issue.

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

3. Consultant agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to the project, and Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

C. DISADVANTAGED BUSINESS ENTERPRISE. In connection with the performance of the Work, Consultant will cooperate with Metra in meeting its commitments and goals with regard to the maximum utilization of disadvantaged business enterprises, and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for any subcontract work under this Agreement.

D. INDEPENDENT CONTRACTOR. Consultant shall be an independent contractor. Services performed pursuant to this Agreement are not rendered as an employee of Metra. Amounts paid pursuant to this Agreement do not constitute compensation paid to an employee.

E. REVOLVING DOOR PROHIBITION. Consultant has reviewed the Affidavit/Certification exhibit and has no knowledge of any former employee or board member being involved in this solicitation process in violation of Section 4.05 of Metra's Bidding Regulations. All former Metra board members and certain employees are expressly prohibited,

for a period of one (1) year after leaving Metra's employ, from engaging in any procurement activity with Metra.

F. **CONFIDENTIALITY.** Any documents or information obtained by Consultant from Metra or created by or on behalf of Consultant in connection with this Agreement shall be kept confidential and shall not be provided to any third party unless disclosure is approved in writing by Metra, or is required by court order or court rule. Consultant shall require its subconsultants, if any, to maintain the confidentiality of Metra's information and documents.

9. **RECORDS.**

A. **RETENTION.** Consultant shall maintain records, including those records required under the Compensation Section above, to show its time and costs, and shall submit monthly progress reports describing the portion of the Work already performed and anticipated during the next time period. On 15 days notice from Metra, all time sheets, billings, and other documentation used in preparing said progress reports shall be made available for inspection, copying, and auditing by Metra at any time during normal business hours, at 547 West Jackson Boulevard, Chicago, Illinois 60661. Consultant shall maintain, for a minimum of five (5) years after the completion of this Agreement, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this Agreement. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of Metra for the recovery of any funds paid by Metra under this Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

B. **AUDIT AND INSPECTION.**

1. Consultant agrees to permit, and shall contractually require all of its subconsultants at all tiers to permit, the authorized representatives of Metra or the Funding Agencies (as defined below), if applicable, to inspect and audit all work sites, work materials, payrolls, books, accounts, records, supporting documents, and any other documents involving this Agreement.

2. All costs and rates charged by Consultant shall be supported by properly executed payrolls, time records, invoices, vouchers, orders, contracts, or other documents evidencing in detail the nature and propriety of the charges.

3. Costs incurred by Consultant shall be eligible for reimbursement under this Agreement if and to the extent they meet all of the requirements set forth below. They must:

   a. be in conformity with all laws, regulations, and guidelines prescribed by the Funding Agencies (as defined below);

b. be made in conformance with the scope and provisions of this Agreement;

c. be necessary in order to accomplish the Work;

d. be in conformance with the cost principles for allowable direct and indirect costs and rates used by Metra for the professional services specific to this Agreement. Metra may, in its sole discretion, accept and use the cost principles established by any applicable Funding Agency;

e. be documented to the satisfaction of Metra; and

f. be treated uniformly and consistently under accounting principles and procedures approved or prescribed by Metra.

4. Metra's payment of any costs and rates pursuant to this Agreement shall not constitute a final determination by Metra of the allowability of such costs and rates until an audit under the provisions of this Agreement has been certified as completed or waived by Metra. In addition, such payments made prior to audit or waiver thereof shall not constitute a waiver of the breach of any terms of this Agreement by Consultant.

5. The close out of this Agreement does not alter in any way the reporting and retention requirements stipulated herein and does not alter Consultant's obligation to return any monies due under this Agreement on the basis of any later audit or other review.

6. If Metra determines after an audit that Consultant's direct or indirect costs or rates submitted hereunder are are expressly unallowable under the express provisions of this Agreement, Consultant shall refund to Metra: (a) the amount of the disallowed costs and rates and (b) simple interest based on the prime rate to be computed on the amount Consultant was paid (whether as a progress or billing payment) in excess of the amount to which Consultant was entitled. Interest will begin to accrue fifteen days from the date Metra notifies Consultant in writing of the excess amount paid. The interest rate will be two points above the prime rate published in the "Money Rates" table of the Wall Street Journal on the day the notice of disallowed costs is sent to Consultant. **However,** Metra may, in its sole discretion, waive all or part of the interest.

C. **OWNERSHIP.** Metra shall retain ownership of all plans, specifications, related documents, computer disks, software, and all other work product (collectively referred to as "**Work Product**"), including, but not limited to, those mentioned above, prepared by or purchased by Consultant in connection with the Work and this Agreement. Metra and the Funding Agencies (as defined below) shall exercise such rights to the Work Product without

further restriction or limitation and without further compensation to Consultant. Upon request, Consultant shall, at its sole cost, arrange, index, and deliver all Work Product to Metra. However, the ideas, concepts, methodologies, processes, inventions, and tools (including hardware and software where applicable) (collectively referred to as "**Tools**") that Consultant previously developed and brings to Metra in furtherance of performance of the Work, shall remain the property of Consultant and shall not be defined as Work Product. Consultant, however, grants to Metra a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use (or permit Metra's agents to use on Metra's behalf) such Tools, but solely for the benefit of Metra when using the Work Product.

D. **COPYRIGHT AND RIGHTS IN DATA.** This Agreement adopts the United States Department of Transportation, Federal Transit Administration ("**FTA**") policy on Patent Rights and rights in data and copyrights as set forth in Part II of the standard FTA grant agreement enforceable between Metra and the FTA.

E. **FOIA REQUIREMENTS.** Metra is subject to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq., "FOIA"), and pursuant to the FOIA, this Agreement is subject to disclosure. In addition, from time to time, Metra may be required to produce certain "public records," as defined in Section 2 of the FOIA, that are in the possession of or under the control of [Company]. Upon Metra's notification to [Company] of a request pursuant to the FOIA, [Company] will, within two (2) business days of Metra's notice, either (i) product the public records, (ii) notify Metra, in writing, that additional time is required to produce the public records, or (iii) notify Metra, in writing, that the public records do not exist or have been destroyed. In the event that [Company] requires additional time to produce the public records, the written notification under (ii), above, will provide an explanation for the delay and the date when the public records will be received from [Company] by Metra. [Company] agrees that in no event shall a delay to produce public records exceed five (5) business days.

If any failure by [Company] to timely comply with a request for public records results in any adverse consequences to Metra, including, but not limited to, fines or penalties being imposed on Metra, said failure by [Company] shall be deemed a material breach of this Agreement.

10. INDEMNIFICATION AND WAIVER.

A. To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and save harmless Metra, the Commuter Rail Division of the Regional Transportation Authority, and their respective directors, officers, agents, and employees (cumulatively referred to as the "**Indemnified Parties**") from and against all loss, claims, liability, cost, and expense (including attorney's fees and other reasonable expenses of litigation or arbitration) which any of them may incur, sustain, or be subject to on account of: (i) all claims, including claims for injury to person or death or damage to property, suffered by any of them which result from or arise out of Consultant's performance of this Agreement or Consultant's failure to perform under this Agreement; and (ii) where applicable to the scope and description of services performed by

Consultant, injury to any person or death or property damage arising out of: (a) any defect or alleged defect of design, regardless of whether the relevant work or design was made by Consultant or a subconsultant, and regardless of the extent to which Metra may have approved or participated in any design work; or (b) any negligence in Consultant's oversight or contract administration. Consultant, however, shall not assume the risk of injury to person (including death) and damage to property and shall not indemnify and save harmless the Indemnified Parties from and against any loss, liability, cost, and expense (including costs of litigation and attorney's fees) to the extent such injury (including death), damage, loss, liability, cost, or expense is caused by the gross negligence or willful misconduct of the Indemnified Parties.

B. Consultant hereby binds itself, its successors, and assigns, to indemnify, defend, and hold harmless the Indemnified Parties from all claims, loss, damages, or expenses (including attorney's fees) for alleged infringement of patent, trademark, or copyright laws and rights, arising from any material or design specified in, or supplied pursuant to, this Agreement.

C. Consultant agrees that the above indemnification includes the Illinois Department of Transportation ("**IDOT**"), FTA, and the Regional Transportation Authority ("**RTA**") (collectively, "**Funding Agency**" or "**Funding Agencies**") if those Funding Agencies participate in the funding of this Agreement.

D. To the fullest extent permitted by law and except to the extent caused by the Indemnified Parties' gross negligence or willful misconduct, Consultant waives all claims for damage to property or person (including death) sustained by Consultant as a result of Consultant's performance of the Work. The obligations, rights, and remedies of this Section 10 shall survive the termination of this Agreement and the completion of the Work.

E. In the event any dispute or claim, related to this Agreement, should arise between the parties, each party agrees to exercise good faith efforts to resolve the matter fairly, amicably, and in a timely manner.

F. Nothing in this Section 10 is intended to violate the provisions of the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq., and this section is not intended to be an indemnification of Metra's or its employees' own negligence to the extent such indemnification would be in violation of such provisions.

11. ACCURACY OF WORK.

A. **REVISIONS REQUIRED.** Metra will be relying upon Consultant's expertise to provide accurate work. Thus, Consultant shall be responsible for the accuracy and conformity of the Work with applicable state, federal, and local laws, codes, and permit requirements. Consultant shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts, and shall do so without additional compensation. Consultant shall

be governed by that degree of care, skill, and diligence that the other reputable members of his or her profession would ordinarily exercise under similar circumstances within the State of Illinois. In addition to any other rights and remedies Metra may have, Consultant shall be responsible for any damages incurred as a result of errors, omissions, and/or negligent acts, and for any losses or cost of repair or remedy arising out of such errors, omissions, and/or negligent acts caused by Consultant, its employees, agents, and subconsultants. Neither Metra's review, approval, payment, nor acceptance of the Work required under this Agreement shall constitute or operate as a waiver relieving Consultant of the professional responsibility for subsequent correction of errors and omissions and/or of any rights under this Agreement. Consultant shall be liable for all damages to Metra caused by Consultant's negligent performance of any services and for subsequent correction of any such errors or omissions, or for clarification of any ambiguities. The obligations, rights, and remedies of this Section 11 shall survive the termination of this Agreement and the completion of the Work.

B. **NOTIFICATION OF ERROR.** Metra will notify Consultant of any error or omission believed by Metra to be caused by the negligence of Consultant as soon as practicable after discovery. Notification may be given by the most practical means deemed suitable by Metra. Consultant will designate and keep current the name of an individual with proper address and telephone number for purposes of notification hereunder. The notification will advise Consultant of the nature of the matter, the action sought from Consultant, and the time constraints required for response. In the event it is later determined that Consultant was not negligent, Consultant will be compensated for additional services performed in accordance with the compensation provisions of this Agreement.

C. **PROJECT MANAGEMENT PLAN/QUALITY MANAGEMENT PLAN.** If applicable, Consultant shall conduct all Work according to Metra's latest Project Management Plan and Quality Management Plan.

12. FUNDING.

A. **SUBJECT TO APPROPRIATIONS.** If this Agreement is for a period of longer than one year, it is subject to the appropriation of funds by Metra's Board of Directors for each year beyond the first year of this Agreement.

B. **SUBJECT TO FINANCIAL ASSISTANCE.** Payments to Consultant under this Agreement might be funded in part by financial assistance from one or more of the Funding Agencies. If any Funding Agency fails to approve this Agreement or to provide financial assistance in the amounts required to fully fund payments to Consultant, Metra reserves the right to terminate this Agreement. This Agreement is subject to the provisions of the financial assistance agreements between Metra and the Funding Agencies, and in the event of conflict between such Funding Agency agreements and this Agreement, the Funding Agency agreements shall control.

Consultant acknowledges that it has had the opportunity to review and copy the Funding Agency agreements before executing this Agreement. Pursuant to the applicable provisions of Metra's Master Agreement with the FTA, Metra gives notice to Consultant that Federal requirements may change, and the changed requirements will apply to this Agreement as required.

C. **NO LIABILITY.** The Funding Agencies shall not be subject to any obligations or liabilities to Consultant or its subconsultants or any other person not a party to this Agreement.

D. **DESIGN WITHIN FUNDING LIMITS.**

1. If this Agreement is for design services, Consultant shall accomplish the design services required under this Agreement so as to permit the award of a contract, using standard Metra procurement procedures for the acquisition, construction, or manufacture of any real or personal property designed at a price that does not exceed the estimated construction or manufacturing contract price as set forth by Metra. The contract estimate for the procurement or construction contract shall be established as part of the Notice to Proceed or communicated to Consultant in writing at a later date. When bids or proposals for the construction or procurement contract are received that exceed the estimated price, Consultant shall perform such redesign and other services as are necessary to permit contract award within the established construction or procurement contract price. These additional services shall be performed at no increase in the price of this Agreement. However, Consultant shall not be required to perform at no increase in the price of this Agreement if Metra determines that the unfavorable bids or proposals are the result of one of the following: (a) events beyond Consultant's reasonable control; (b) an increase in material cost which could not have been anticipated by reasonable consultants within the industry; or (c) an undue delay by Metra in issuing the construction or procurement solicitation.

2. Consultant will promptly advise the Contracting Officer if Consultant finds, at any time during the Work, that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design the real or personal property within these limitations. Upon receipt of such information, Metra will review Consultant's revised estimate of construction cost. If Metra determines that Metra's estimated construction or procurement contract price is so low that award of a construction or procurement contract (not in excess of such estimate) is improbable, Metra may either: a) authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated

construction or procurement contract price, or b) adjust its estimated contract price. Consultant's continued performance shall mean acceptance of the above changes or adjustments by Metra. If Metra determines Consultant's cost estimates are reasonable, but does not accept them, Metra may either terminate this Agreement for convenience or release Consultant from the requirements of this Section.

13. **CONTRACT CHANGES**. Any change, modification, change order, or amendment (hereinafter "Contract Change") to this Agreement must be in writing and approved and signed by Metra's Executive Director or his designee, where authorized. Contract Changes can include, but are not limited to, changes to scope, time extensions, cost, contract terms, or any combination thereof. Consultant shall be liable for satisfactorily correcting, and/or all costs resulting from, any change not ordered in writing and signed by the Executive Director or his authorized designee. Disagreements that cannot be resolved with negotiations shall be resolved in accordance with the Disputes clause.

A. **CHANGE ORDERS**. By written order, at any time, and without notice to the surety, the Executive Director may, subject to all appropriate adjustments, make changes to the general scope of this Agreement ("Change Order").

B. **CHANGE ORDER PROCEDURES**.

1. Either Metra or Consultant may initiate a Change Order.

2. Metra shall prepare and when appropriate, issue the written Change Order in conformance with Metra's applicable administrative procedures for Change Orders. Consultant shall supply all requested information, proposals, and any supporting back-up documentation.

3. Consultant Initiated Change Orders

   a. Within fifteen (15) days of when Consultant knows or should have known a cause for a Change Order, Consultant shall send Metra a notification that it intends to submit a Change Order request ("Change Order Notification" or "NCO").

   b. The NCO shall provide Metra with sufficient explanation to understand:

      1. the nature of the prospective Change Order request; and
      2. the rational or cause.

   c. The purpose of the NCO is not to approve or disapprove a Change Order, but to provide Metra with additional time to research the issues and thus expedite the Change Order process.

d. Within seven (7) business days of receipt of the NCO, Metra shall inform Consultant whether it believes the potential Change Order request merits further discussion.

e. Metra's response to the NCO shall not be relied upon as approval of a yet to be submitted Change Order, including any terms, scope, prices, or negotiated hours.

f. Unless waived by Metra in writing, a Change Order request will not be processed without the prerequisite NCO submittal.

4. After receiving a NCO response from Metra Consultant shall send, if appropriate, the Change Order request complete with all pertinent drawings, prospectus, schedule breakdown, and cost data to Metra's project manager.

C. INELIGIBLE CHANGE ORDER COSTS.

1. The parties acknowledge that costs incurred by Consultant in response to Metra's comments or changes to NCO submitted for Metra's review are not eligible for a Change Order, and such costs are already incorporated into Consultant's fees.

2. Notwithstanding the above, Consultant must submit a NCO within five (5) business days if it believes that Metra's comments or changes are beyond the work bargained for by the parties and eligible for a Change Order. Prior to incorporating any Metra comments or changes that Consultant believes are entitled to a Change Order, Consultant must wait for Metra's response to the NCO.

D. CONSULTANT TO CONTINUE WORK.

Notwithstanding the above, Metra may require Consultant to proceed with any Contract Change. Accordingly, pursuant to the Disputes Clause requiring continued performance of the Work, Consultant shall perform work as set forth in Metra's Contract Change. Failure of the parties to agree to an adjustment in price or time shall not excuse Consultant from proceeding with the Work as changed. By proceeding with the work as directed by Metra, Consultant shall not be deemed to have prejudiced any claim for additional compensation or an extension of time for completion.

E. CONTRACT CHANGE EFFECTIVE DATE.

Consultant will first analyze any proposed Contract Change request to determine the latest calendar date wherein the change incorporation must commence to minimize (preferably eliminate) any

contract time extension. Consultant will immediately notify Metra of this "Effective Date" and the prospective schedule impact to permit timely review by Metra staff of overall impact.

14. DISPUTES.

A. DISPUTE RESOLUTION. All claims, disputes and other matters in question between Consultant, Metra, and subconsultants arising out of, or relating to, this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Arbitration Rules of the American Arbitration Association then existing, as modified herein, unless the parties mutually agree otherwise.

B. JOINDER. Metra, Consultant (or any other architect, engineer, or construction manager), subconsultants, contractors, surety, subcontractors, or any material suppliers who have an interest in the dispute shall be joined as parties to the arbitration. Metra will endeavor to require any appropriate third party to be subject to joinder. Consultant's contracts with its subcontractors shall also require such joinder.

C. AUTHORITY OF THE ARBITRATOR. The arbitrator(s) shall have authority to decide all issues between the parties including, but not limited to, claims for extras, delay and liquidated damages, matters involving defects in the Work, rights to payment, and whether the necessary procedures for arbitration have been followed. The parties expressly agree that the arbitrator(s)' authority is limited to interpretation and application of the specific terms of the Agreement between the parties and the applicable laws of the State of Illinois and to deviate from same constitutes a manifest disregard of the law. The arbitrator(s) shall have no authority to add to, take from, or modify any of the provisions of the contract between the parties.

D. FINAL BINDING DECISION. The foregoing agreement to arbitrate and any other agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement, shall be specifically enforceable under the prevailing arbitration law. Subject to a Funding Agency's consent required below, the award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

E. DEMAND FOR ARBITRATION. The written demand for arbitration shall be served upon the other party to the arbitration and with the American Arbitration Association ("AAA") within ten (10) business days after receiving written notice of Metra's final decision with which it disagrees. If the parties mutually agree, they may extend the time to file a written demand for arbitration in order to engage in additional negotiations.

F. WORK SHALL CONTINUE. Unless otherwise agreed in writing by Metra, all parties shall diligently and in good faith carry on the work and timely perform their duties during any

negotiation or arbitration proceedings, and Metra shall continue to make payments of any uncontested invoices as required by the Agreement.

G. **JURISDICTIONAL CHALLENGE.** If any proceeding is brought to contest the right to arbitrate and it is determined that such right exists, the losing party shall pay all costs and attorneys' fees incurred by the prevailing party.

H. **ADDITIONAL RULES.** In addition to the Construction Industry Arbitration Rules of the American Arbitration Association applicable to any arbitration hereunder, the following shall apply:

1. Pleading. Promptly upon the filing of the arbitration, each party shall be required to set forth in writing and to serve upon each other party a detailed statement of its contentions of fact and law.

2. Discovery. All parties to the arbitration shall be entitled to the discovery procedures and to the scope of discovery applicable to civil actions under Illinois law, including the provisions of the Code of Civil Procedure and Illinois Supreme Court rules applicable to discovery. Such discovery shall be noticed, sought, and governed by those provisions of Illinois law.

3. The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein.

4. These additional rules shall be implemented and applied by the arbitrator(s).

I. **FEES AND EXPENSES.** The fees and expenses of the arbitration proceedings, i.e. judge's fees, reporter fees, and other AAA's fees, shall be divided equally between Metra and each party to the arbitration. Each party shall pay its own personally incurred fees and expenses, including its own attorney and witness fees.

J. **CONSENT BY FUNDING AGENCIES.** The parties agree that upon the submittal of a claim for arbitration, Metra shall promptly notify the appropriate Funding Agency, if any. If in the event the agreement between the Funding Agency and Metra prohibits the use of arbitration as a dispute resolution process, Metra shall promptly notify the parties, and all arbitration activities shall cease. Pursuant to Funding Agency grant conditions, any settlement or decision must be reviewed and approved by the Funding Agency before it is binding on Metra. The parties may then pursue any claim in a court of law.

15. SAFETY REQUIREMENTS

A. **COMPLIANCE**. Before entering Metra property or property owned by other railroads that is relevant to this Agreement, Consultant and its subcontractors at any tier who meet the definition of a Roadway Worker below shall cause their employees to comply with Metra's Safety Rules and General Procedures (or the applicable safety rules of the railroad where the Work is being conducted). If Consultant or its subcontractors perform Work on Metra trackage or trackage of another railroad as part of this Agreement (or within 25 feet of Union Pacific & BNSF trackage), Consultant, subcontractors at any tier, and their respective employees must complete Metra's Contractors Orientation Safety Program located at "contractororientation.com" or the safety orientation of the railroad where Work is being conducted. The web-master will charge an $11.00 fee for each of Consultant's and its subcontractors' employees, and will furnish a contractor orientation course completion card which must be carried at all times by the employee while on railroad trackage where Work is being conducted.

B. **DEFINITION**. A Roadway Worker is defined as: Any employee of the railroad, or of a contractor to the railroad, whose duties include and who is engaged in the inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, roadway facilities, or electric traction systems, or in the operation of roadway maintenance machinery on or near track, with the potential of fouling a track.

C. **NOTICE**. Consultant and its subcontractor are not permitted to work on or near Metra trackage (or within 25 feet of Union Pacific & BNSF trackage) until the Metra employee- in- charge or the other appropriate railroad's employee is present at the job site and the extended job briefing has been conducted.

D. **EMERGENCY. CALL METRA POLICE (312) 322-2800**

16. **MISCELLANEOUS.**

A. **COMPLIANCE WITH LAWS**. Consultant hereby agrees to comply with all applicable statutes, ordinances, building codes, and regulations of the United States, the State of Illinois, Metra, and units of local government. Any contract executed in violation of the terms and conditions of law may be null and void as to Metra.

B. **GOVERNING LAWS**. To the extent not preempted by federal law, this Agreement is made in and shall be interpreted under the laws of the State of Illinois, and Consultant agrees and consents that only the courts of Cook County, State of Illinois, the United States District Court for the Northern District of Illinois, and 7th Circuit shall have jurisdiction over controversies arising out of this Agreement. The parties to this Agreement irrevocably consent to jurisdiction of such courts and waive any objection based on venue or forum nonconveniens.

C. **NOTICES**. All notices, demands, elections, and other instruments required or permitted to be given or made by either party upon the other under the terms of this Agreement or any

sent by certified or registered mail with proper postage prepaid, hand delivered, or sent by facsimile transmission, with proof of successful transmission sent by regular mail as either party may from time to time furnish to the other in writing. All notices to Metra shall be sent to the Director of Professional Services.

D. **HEADINGS.** The section headings of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

E. **SET-OFF RIGHTS.** Metra may, but shall not be obligated to, withhold from and set-off against any payment otherwise due and payable by Metra under this Agreement, any amount payable by Consultant to Metra under or in connection with this Agreement.

F. **SEVERABILITY.** If any provision of this Agreement, or any paragraph, sentence, clause, phrase, or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties.

G. **WAIVER.** No waiver of any right of a party under this Agreement shall be effective unless made in writing by the party whose rights are thereby waived, stating explicitly that a waiver of a right under this Agreement is intended, and executed by an officer who has authority generally to execute contracts for the waiving party.

H. **CONSTRUCTION.** Consultant is represented by legal counsel of its choice and is fully aware of the terms of this Agreement. Consultant agrees that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

I. **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F (or the most recent Circular), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Metra requests which would cause Metra to be in violation of the FTA terms and conditions.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES RECITED BELOW:

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION D/B/A METRA	**CONSULTANT**
BY_____	BY_____
_____ PRINT NAME	_____ PRINT NAME
TITLE EXECUTIVE DIRECTOR	TITLE
ATTEST	ATTEST
BY_____ DATE	BY_____ DATE
TITLE ASSISTANT SECRETARY TO THE BOARD	TITLE_____

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

CONTRACT CLAUSES

If applicable, FTA Circular 4220.1F Contract Clauses will apply to any purchase order/contract resulting from this Invitation for Bid or Request for Proposal. See the attached listing of the Applicability of Third Party Clauses for the respective type of procurement.

These Clauses in this Exhibit are a generalized guide to the FTA required Federal Clauses. In the event that the Contract sets forth more specific requirements, the Clause(s) in the Contract shall take precedence and control over the Clause(s) in this Exhibit.

For further information, visit the FTA website: http://www.fta.dot.gov.

APPLICABILITY OF THIRD PARTY CONTRACT CLAUSES

(excluding micro-purchases, except for construction contracts over $2,000)

PROVISION	Page No.	TYPE OF PROCUREMENT: Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	Pg. 4	All	Not Applicable	Not Applicable	Not Applicable	Not Applicable
False Statements or Claims Civil and Criminal Fraud	Pg. 4	All	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Energy Conservation	Pg. 4	All	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Clean Air	Pg. 5	>$100,000	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Clean Water	Pg. 5	>$100,000	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Civil Rights (Title VI, EEO, ADA except Special DOL, EEO Clause for construction projects)	Pg. 6	All	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Disadvantaged Business Enterprises (DBEs)	Pg. 6	All	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Access to Third Party Contract Records	Pg. 6	All	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Changes to Federal Requirements	Pg. 9	All	All	All	All	All
Termination	Pg. 9	>$10,000 if 49 CFR part 18 applies.	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Patent Rights	Pg. 9	R & D	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Rights in Data and Copyrights	Pg. 9	R & D	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Contract Work Hours and Safety Standards Act	Pg.10	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Drug Misuse and Testing	Pg. 11	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Alcohol Misuse and Testing	Pg. 11	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Recycled Products	Pg. 11	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Resolution of Disputes, Breaches, or Other Litigation	Pg. 12	>$100,000	Not Applicable	Not Applicable	Not Applicable	Not Applicable

APPLICABILITY OF THIRD PARTY CONTRACT CLAUSES

(excluding micro-purchases, except for construction contracts over $2,000)

TYPE OF PROCUREMENT

PROVISION	Page No.	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Cargo Preference	Pg. 12	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Buy America	Pg. 13	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Davis-Bacon Act	Pg. 13	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Copeland Anti-Kickback Act Section 1 Section 2	Pg. 14	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Bonding	Pg. 14	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Transit Employee Protective Arrangements	Pg. 14	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Charter Service Operations	Pg. 14	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
ADA Access	Pg. 14	A & E	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Seismic Safety	Pg. 15	A & E for new buildings & additions	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Incorporation of FTA Terms	Pg. 15	All	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Suspension and Debarment	Pg. 15	>$25,000	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Lobbying	Pg. 15	>$100,000	Not Applicable	Not Applicable	Not Applicable	Not Applicable
School Bus Operations	Pg. 15	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Conformance with ITS National Architecture	Pg. 15	ITS projects	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Notification of Federal Participation for States	Pg. 15	Limited to States	Not Applicable	Not Applicable	Not Applicable	Not Applicable

THIRD PARTY CONTRACTING GUIDANCE

APPICABILITY

No Government Obligations to Third Parties.

A. Contractor acknowledges and agrees 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 Customer, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

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

False or Fraudulent Statements or Claims.

The requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. part 3801 et seq and US DOT regulation 49 C.F.R. Part 31 apply to this Contract. Accordingly, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes 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, as amended, on the Contractor to the extent the federal government deems appropriate. If applicable, the federal government reserves the right to impose on the Contractor the penalties of 18 U.S.C. Part 1001 and 49 U.S.C. Part No. 5307 (n) (1), to the extent the federal government deems appropriate.

Energy Conservation.

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act (42 U.S.C., Section 6321 et seq.).

Environmental Requirements.

The Contractor recognizes that many federal and state laws imposing environmental and resource conservation requirements may apply to the project. Some, but not all, of the major federal laws that may affect the project include: the National Environmental Policy act of 1969, as amended, 42 U.S.C. § 4321 et seq; the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq; and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. The Contractor also recognizes that U.S. EPA, FHWA and other agencies of the federal government have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect the project. Thus, the Contractor

agrees to adhere to, and impose on its subcontractors and any other parties at any tier, any such federal requirements as the federal government may now or in the future promulgate that is applicable to this project. Listed below are requirements of particular concern to FTA, Metra and the Contractor. The Contractor acknowledges that this list does not constitute the Contractor's entire obligation to meet all federal environmental and resource conservation requirements.

a. **Environmental Protection.**

The Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et esq. in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

b. **Air Quality.**

The Contractor agrees as follows:

(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. Specifically:

(a) The Contractor agrees to comply with all applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Project Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, "40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans."40 C.F.R. Part 93. To support the requisite air quality conformity finding for the project, the Contractor agrees to implement each air quality mitigation and control measure incorporated in the project. The Contractor agrees that any project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure, will be wholly consistent with the description of the design concept and scope of the project described in the SIP.

(2) The Contractor agrees to comply with, and assures compliance by its subcontractors at any tier, with these requirements resulting from the project. The Contractor will report any violation by its own employees and subcontractors at any tier, that may result in any violation of these requirements to Metra, the FTA, and to the appropriate U.S. EPA Regional Office.

c. **Clean Water.**

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

2. The Contractor agrees to comply with, and assures compliance by its subcontractors at any tier, with these requirements resulting from the project. The Contractor will report any violation by

its own employees and subcontractors at any tier, that may result in any violation of these requirements to the FTA, Metra, and to the appropriate U.S. EPA Regional Office.

Audit.

Contractor shall permit the authorized representatives of either Metra, RTA, IDOT, U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of Contractor relating to its performance under the Contract.

Disadvantage Business Enterprise ("DBE").

A. Contractor must take all such action as may be necessary and reasonable to assure that disadvantaged business enterprises have an equitable opportunity to compete in all subcontracting activities and shall cooperate with Metra in its program for the participation of disadvantaged enterprises in Metra procurements.

B. U.S. Department of Transportation Regulations. Each Contractor shall agree to abide by the statements in subparagraphs (1) and (2) below.

Policy: It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of Contracts financed in whole or in part with federal funds under this Contract. Consequently, the DBE requirements of 49 CFR Part 26 applies to this Contract.

DBE Obligation: The Contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of Contracts and subcontracts finances in whole or in part with federal funds provided under this Contract. In this regard all Contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform Contracts. Contractors shall not discriminate on the basis of race, religion, color, sex, national origin, age, or disability in the award and performance of DOT-assigned Contracts.

Employment.

A. Equal Employment Opportunity and Fair Employment Practices. In connection with the execution and performance of this Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

B. FTA Regulations. Contractor for itself, its assignees and successors in interests, agrees that it will comply with the following regulation:

1. Compliance with Regulations. Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation

(hereinafter, "DOT") Title 49, Code of federal regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this Contract.

2. Nondiscrimination. Contractor, with regard to the work performed by it during this Contract, shall not discriminate on the grounds of race, religion, color, sex, national origin, age or disability in the selection and retention subcontractors, including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this Contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts (including Procurements of Materials and Equipment). In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under the Contract and the regulations relative to nondiscrimination on the grounds of race, religion, color, sex, national origin, age or disability.

4. Information and Reports. Contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by Metra or FTA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish said information, Contractor shall so certify to Metra or FTA, as appropriate, and shall set forth what efforts it has made to obtain said information.

5. Sanctions for Noncompliance. In the event Contractor's noncompliance with the nondiscrimination provisions of this Contract, Metra shall impose such Contract sanctions as it or FTA may determine to be appropriate including, but not limited to:

a. Withholding of payments to Contractor under this Contract until Contractor complies, and/or

b. Cancellation, termination or suspension of this Contract, in whole or in part.

6. Incorporation of Provisions. Contractor shall include these paragraphs (1) through (6) of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant hereto. Contractor shall take such action with respect to any subcontract or procurement as Metra or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request Metra to enter into such litigation to protect the interest of Metra, and in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

C. Equal Employment Opportunity - FEPC. Contractor shall comply with, and assure that each subcontractor complies with the following regulations of the Illinois Human Rights Commission, as amended:

1. In the event of the Contractor's noncompliance with any provision of this Equal Opportunity Clause, the Illinois Human rights Act or the Illinois Human Rights Commission's Rules and Regulations, the Contractor may be declared nonresponsible and therefore ineligible for future Contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the Contract may be canceled or avoided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by stature or regulation. During the performance of this Contract, the Contractor agrees as follows:

a. That it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, ancestry, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are under utilized and will take appropriate affirmative action to rectify any such under utilization.

b. That, if it hires additional employees in order to perform this Contract or any portion hereof, it will determine the availability (in accordance with the Commission's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

c. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, religion, color, sex, national origin, age, disability or ancestry, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

d. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Commission's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly so notify the Illinois Human Rights Commission and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

e. That it will submit reports as required by the Illinois Human Rights Commission's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Commission or the Contracting Agency,

and in all respects comply with the Illinois Human Rights Act and the Commission's Rules and Regulations.

f. That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Illinois Human Rights Act and the Commission's Rules and Regulations.

g. That it will include verbatim or by reference the provisions of paragraphs (a) through (g) of this clause in every performance subcontract as defined in Section 1.1 (17) (a) of the Commission's Rules and Regulations so that such provisions will be binding upon every such subcontractor; and that it will also include the provisions of paragraphs (a), (e), (f) and (g) in every supply subcontract as defined in Section 1.1 (17) (a) of the Commission's Rules and Regulations so that such provisions will be binding upon every such subcontractor. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by all its subcontractors and further it will promptly notify the contracting agency and the Illinois Human Rights Commission in the event any subcontractor fails or refuses to comply therewith. In addition, no Contractor will utilize any subcontractor declared by the Commission to be nonresponsible and therefore ineligible for Contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

2. Each Contractor and subcontractor shall in turn include the Equal Employment Opportunity Clause set forth in Section 6.1 of these Rules and Regulations in each of its subcontracts verbatim or by reference so that provisions of Paragraphs (a) through (g) of said clause will be binding upon subcontractors of every tier, provided, however, that only paragraphs (a), (e), (f) and (g) need be included in every subcontract as defined in Section 1.1 (17) (a) of these Rules and Regulations.

Copyright and Rights in Data.

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information on Contracts. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual. The Agreement shall be subject to the FTA's policy on copyrights and rights in data with respect to reports and other technical materials developed with in conjunction with planning, research development or demonstration projects. That policy as set forth in the most current FTA Master Agreement available from the FTA website permits the author or grantee to copyright the work but FTA reserves a royalty-free nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for Government purposes.

Changing Requirements.

To achieve compliance with changing federal, state and local requirements, Contractor is to recognize that the requirements may change and the changed requirements will apply to this project as required, unless the federal, state and/or local government determines otherwise.

Patent Rights.

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information on Contracts. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual. The Agreement shall be subject to the FTA's policy on any invention, improvement, or discovery conceived or first actually reduced to practice in conjunction with planning, research development or demonstration projects as stated in the most current FTA Master Agreement available from the FTA website.

Contract Hours and Safety Standards Act.

The Contractor agrees to comply with and assures compliance by its sub-contractors at any tier, with applicable employee protection requirements for employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §327 through 332, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Contracts (also Labor Standard Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)", 29 C.F.R. Part 5.

This Act applies to construction Contracts and, in very limited circumstances, non-construction projects that employ laborers or mechanics on public work.

(1) Overtime requirements – No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages – In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages – Metra shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any other Federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for

unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts – The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The 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.

Drug and Alcohol Testing.

To the extent the Contractor, subcontractor, or any party contracted for work as a result of this Contract performs a safety sensitive function, it agrees to comply with, and assures its employees comply with the requirements of 49 U.S.C. Part 5331 and 49 C.F.R. Part 653 for Drug Abuse. To the extent the Contractor, subcontractor, or any party contracted for work as a result of this Contract performs a safety sensitive functions, it agrees to comply with, and assures its employees comply with the requirements of 49 U.S.C. Part 5331, 49 C.F.R. Part 654 for Alcohol Abuse.

Preference for Recycled Products.

If specified by Metra in the Invitation For Bid or Request For Proposal solitication, and to the extent practicable and economically feasible, Metra agrees to accept by competitive preference, products and services that conserve natural resources, protect the environment and that are energy efficient. Examples of such products may include, but are not limited to products described in the U.S. Environmental Protection Agency guidelines at 40 C.F.R. parts 247-253, which implement section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6962.

Termination.

Metra may terminate the Contract at any time hereafter, with or without cause, by giving written notice to the Contractor. Termination shall be effective upon receipt of such notice by the Contractor. If Metra terminates the Contract other than for breach thereof by the Contractor, Metra agrees to pay the Contractor, and the Contractor agrees to accept as its sole remedy, cancellation charges equal to the remaining unpaid costs accrued and obligated to date of cancellation. In the event of breach or violation by the Contractor of any provision of the Contract, Metra may allow the Contractor a reasonable opportunity to cure the breach prior to termination under this provision. Upon termination of this Contract for breach by the Contractor, the Contractor assumes liability for all excess costs incurred by Metra to complete the Scope of Services specified in the Contract.

Debarment and Suspension.

The contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transactions it enters into.

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

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

Resolution of Disputes, Breaches, or Other Litigation..

See the relative Disputes Section in the Contract Documents.

Cargo Preference – Use of United States Flag Vessels.

The Cargo Preference requirements apply to all Contracts greater than $3,000 which involving equipment, materials, or commodities which may be transported by ocean vessels. The Contractor agrees:

A. To utilize privately owned United States flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo lines, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.

B. To furnish within 20 days following the date of loading, for shipment 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 Pace (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration 400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project.

C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.

Fly America Requirements.

The Fly America requirements apply to all Contracts greater than $3,000 which include the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S. The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients (i.e. Metra) and sub-recipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary

to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Buy America.

The Buy America requirements apply to the following types of Contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $100,000). The Buy America requirements flow down from FTA recipients (i.e. Metra) and sub-recipients to first tier Contractors, who are responsible for ensuring that lower tier Contractors and subcontractors are in compliance. The $100,000 threshold applies only to the grantee's (Metra's) Contracts, subcontracts under that amount are subject to Buy America.

A. Pursuant to Section 165.a and 165.b of the Surface Transportation Assistance Act of 1982, the Contractor acknowledges that federal funds shall not be appropriated or utilized for any Contract awarded pursuant to this bid unless steel, cement and manufactured products used in such projects are produced in the United States; provided however, that the foregoing provision shall not apply where the Secretary of Transportation has made one of the following determinations:

   (1) That the application of the foregoing provision would be inconsistent with the public interest
   (2) That such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality
   (3) In the case of the procurement of bus and other rolling stock (including train control, communication, and traction power equipment), that (a) the cost of components which are produced in the United States is more than 60% of the vehicle or equipment described in this paragraph, and (b) final assembly of the vehicle or equipment described in this paragraph has taken place in the United States
   (4) That inclusion of domestic material will increase the cost of the overall project Contract by more than 25%

B. For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

C. Likewise, the Contractor agrees as a condition of responsiveness to and in order to induce the acceptance of the Bid Proposal, that it will submit with its Bid Proposal, a completed Buy America Certification.

Prevailing Wages.

Under 49 U.S.C. Section 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Common Grant Rules require contracts for construction, alteration, or repair at any contract tier exceeding $2,000 to include provisions requiring compliance with the Davis-Bacon Act, 40 U.S.C. Sections 3141 *et seq.*, and implementing DOL regulations "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction," 29 CFR Part 5. The Davis-Bacon Act requires that contractors pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires

contractors to pay wages not less than once a week. Metra must include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and must condition contract award upon the acceptance of that wage determination. These requirements are in addition to the separate Wage and Hour Requirements addressed in paragraph 2.c(1) of this Chapter IV.

Anti-Kickback.

Section 1 of the Copeland "Anti-Kickback" Act, at 18 U.S.C. Section 874, prohibits anyone from inducing, by any means, any person employed on construction, prosecution, completion, or repair of a federally assisted building or work, to give up any part of his or her compensation to which he or she is otherwise entitled. Section 2 of that Act, at 40 U.S.C. Section 3145, as amended, and implementing DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 CFR Part 3, impose record keeping requirement on all contracts for construction, alteration, or repair exceeding $2,000. The Common Grant Rules also require provisions for compliance with the Copeland "Anti-Kickback" Act, as amended, and implementing DOL regulations.

Bonding.

Bonds are required for all construction contracts exceeding the simplified acquisition threshold (*see*, Chapter II, Subsection 3.b) unless FTA determines that other arrangements adequately protect the Federal interest.

Protection for Public Transportation Employees.

When public transportation services are acquired from a contractor, the terms of Metra's DOL certification of public transportation employee protective arrangements will apply to work under the contract provided by those employees covered by the certification. That certification is required by 49 U.S.C. Section 5333(b) (often referred to as "13(c)") and implementing DOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215. Consequently, the contractor must comply with the terms of that DOL certification.

The Fair Labor Standards Act, 29 U.S.C. Sections 201 *et seq.*, also applies to public transportation employees performing work involving commerce.

Accessibility.

A contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 *et seq.*; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)" using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. Metra advises its contractors operating public transportation services to review the requirements for public entities in this context.

Charter Service Restrictions.

A contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support any charter service operations except as permitted by 49 U.S.C. Section 5323(d) and FTA regulations, "Charter Service," 49 CFR Part 604.

School Bus Restrictions.

A contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support exclusive school bus operations except as permitted by 49 U.S.C. Sections 5323(f) or (g) and FTA regulations, "School Bus Operations," 49 CFR Part 605, to the extent consistent with 49 U.S.C. Sections 5323(f) or (g).

Seismic Safety.

Seismic safety provisions must be included in its contracts for the construction of new buildings or additions to existing buildings as required by 42 U.S.C. Sections 7701 *et seq.*, and DOT regulations, "Seismic Safety," 49 CFR Part 41 at Sections 41.117 and 41.120, implementing the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. Sections 7701 *et seq.*

Special Notification Requirements for States.

Not applicable because Metra is not a State recipient.

Intelligent Transportation Systems.

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

Lobbying Certification and Disclosure.

If the contract will exceed $100,000, Metra must obtain a lobbying certification before awarding the contract, and if applicable, a lobbying disclosure from a prospective contractor. *See*, DOT regulations, "New Restrictions on Lobbying" 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352, which implement the Byrd "Anti-Lobbying" Amendment, 31 U.S.C. Section 1352.

Incorporation of FTA Terms.

The provisions in this section includes, in part, certain standard terms and conditions required by USDOT/FTA, whether of not expressly set forth in these provisions. All contractual provisions required by USDOT/FTA, as set forth in FTA Circular 4220.1F, or the most recent Circular, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all USDOT/FTA 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 Metra requests, which would cause Metra to be in violation of the USDOT/FTA terms and conditions.

ATTACHMENT C

Metra

Memorandum

DATE: June 21, 2012

TO: **DISTRIBUTION**

FROM: Carlos Gamboa, Department Head
Professional Services/Contracts

SUBJECT: **Request for Proposal No. 49109A**
Provide FTA 4220.1F Procurement Assessment Consulting Services

The request for proposal for subject RFP will be published on June 25, 2012. Proposals will be opened on July 25, 2012. Please return your comments or approval as soon as possible, but not later than June 28, 2012. There is no pre-proposal meeting for this RFP.

DISTRIBUTION/APPROVAL:

Paul Kisielius, Sr. Division Director, GA	**DATE SIGNED**
J. Thomas, DBE	**DATE SIGNED**
D. Simmons, Capital Grants	**DATE SIGNED**
Risk Management	**DATE SIGNED**

NOTE: Ms. Thomas - Please advise of any additional firms that can be added to the proposers list by June 25, 2012.

Agent: Mr. Steve Bauman, C.P.M.

CG:
Attachments

Metra is the registered service mark for the Northeast Illinois Regional Commuter Railroad Corporation.

SUMMARY OF METRA PROCUREMENT SOLICITATIONS
PREBID

ı :ting Date: N/A	Date Prepared: 6/21/12	
Item Number: N/A	**Funding Source: Operating**	**IFB/RFP No.: 49109A**
Proposal Due Date: 7/25/12	**Public Notice Date: 6/25/12**	**Publication: Chicago Sun-Times**

SUBJECT:

Provide FTA 4220.1F Procurement Assessment Consulting Services

ESTIMATED VALUE: $500,000.00

ACTION:

Solicit proposals to provide FTA 4220.1F Procurement Assessment Consulting Services.

(Revised 05/98)Contracting Agent: Mr. Steve Bauman, C.P.M.

REQUEST FOR PROPOSAL

EXHIBIT 1

Provide United States Department of Transportation, Federal Transit Administration (FTA) Circular 4220.1F Procurement Assessment Consulting Services

RFP NO.: 49109A

PROPOSAL DUE DATE: July 25, 2012 BY 10:00 A.M. (LPT)

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION D/B/A METRA
PROFESSIONAL SERVICES/CONTRACTS
547 WEST JACKSON BOULEVARD
CHICAGO, IL 60661

NO OFFER BID SHEET

NO OFFER: If no bid is to be submitted, detach this sheet from the Request for Quotation, complete the information requested, fold, staple, affix postage, enter return address and mail.

NO ENVELOPE NECESSARY.

NO BID SUBMITTED FOR REASONS CHECKED:

( ) CANNOT COMPLY WITH SPECIFICATIONS
( ) DO NOT PERFORM THIS SERVICE
( ) OTHER (PLEASE SPECIFY)_____

WE DO ( ) DO NOT ( ) DESIRE TO BE RETAINED ON YOUR MAILING LIST FOR FUTURE ACQUISITIONS OF THIS TYPE.

SIGNATURE AND
TITLE:_____

COMPANY:_____

(FOLD ALONG DOTTED LINE)

FROM: AFFIX POSTAGE HERE

METRA
PROFESSIONAL SERVICES/CONTRACTS
11TH FLOOR
547 WEST JACKSON BOULEVARD
CHICAGO, IL 60661

RFP NO.: 49109A
TITLE: Provide FTA 4220.1F Procurement Assessment Consulting Services
COMM: 5722, 5724,5704
AGENT: Mr. Steve Bauman, C.P.M.

Request for Proposal

United States Department of Transportation,
Federal Transit Administration (FTA)

FTA Circular 4220.1F Procurement Assessment Consulting Services

RFP Number: 49109A

Proposal Due Date: July 25, 2012

Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra
Professional Services/Contracts
547 West Jackson Boulevard
Chicago, IL 60661

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I INTRODUCTION

I.A Purpose

The Northeast Illinois Regional Commuter Railroad Corporation (d/b/a Metra), a political subdivision of the State of Illinois pursuant to the Regional Transportation Authority Act (70 ILCS 3615/1.01 et seq.) as amended, is seeking to contract for FTA Circular 4220.1F Consulting Services to assess procurement policies and procedures and design a training program with the intention of improving Metra personnel's understanding of and compliance with various Federal grant conditions, including the United States Department of Transportation, Federal Transit Administration regulations (FTA Circular 4220.1F).

I.B Metra Background

The Commuter Rail Division, of the Regional Transportation Authority, a unit of Illinois local government created under 70 ILCS 3615/1.01 et seq., and its operating corporation, Northeast Illinois Regional Commuter Railroad Corporation (cumulatively known as "Metra"), are recognized as one of the best commuter rail systems in the United States. We currently operate throughout the six counties of Northeastern Illinois. Our mission is to provide safe, reliable, on-time service; to maintain the existing rail assets of the region; to know our customers and promote our service; and to work and speak on behalf of the commuter rail component of the region's transportation network.

Metra is responsible for all commuter rail operations in the Northeastern Illinois area, including day-to-day operations, fare and service levels, finance, capital improvements, passenger services, safety, and system planning. Under Metra's supervision, commuter rail service is also operated by private carriers under contract to Metra. These contracts are called purchase of service agreements (PSA's). These private carriers are:

- Union Pacific Railroad (UP);
- Burlington Northern Santa Fe Railway (BNSF); and
- Northern Indiana Commuter Transportation District (NICTD)
    - Owner and Operator of the South Shore Line.

II PROJECT DESCRIPTION

II.A Objective

Metra intends to enhance its staff's compliance with FTA Circular 4220.1F by expanding the knowledge of specified functional managers

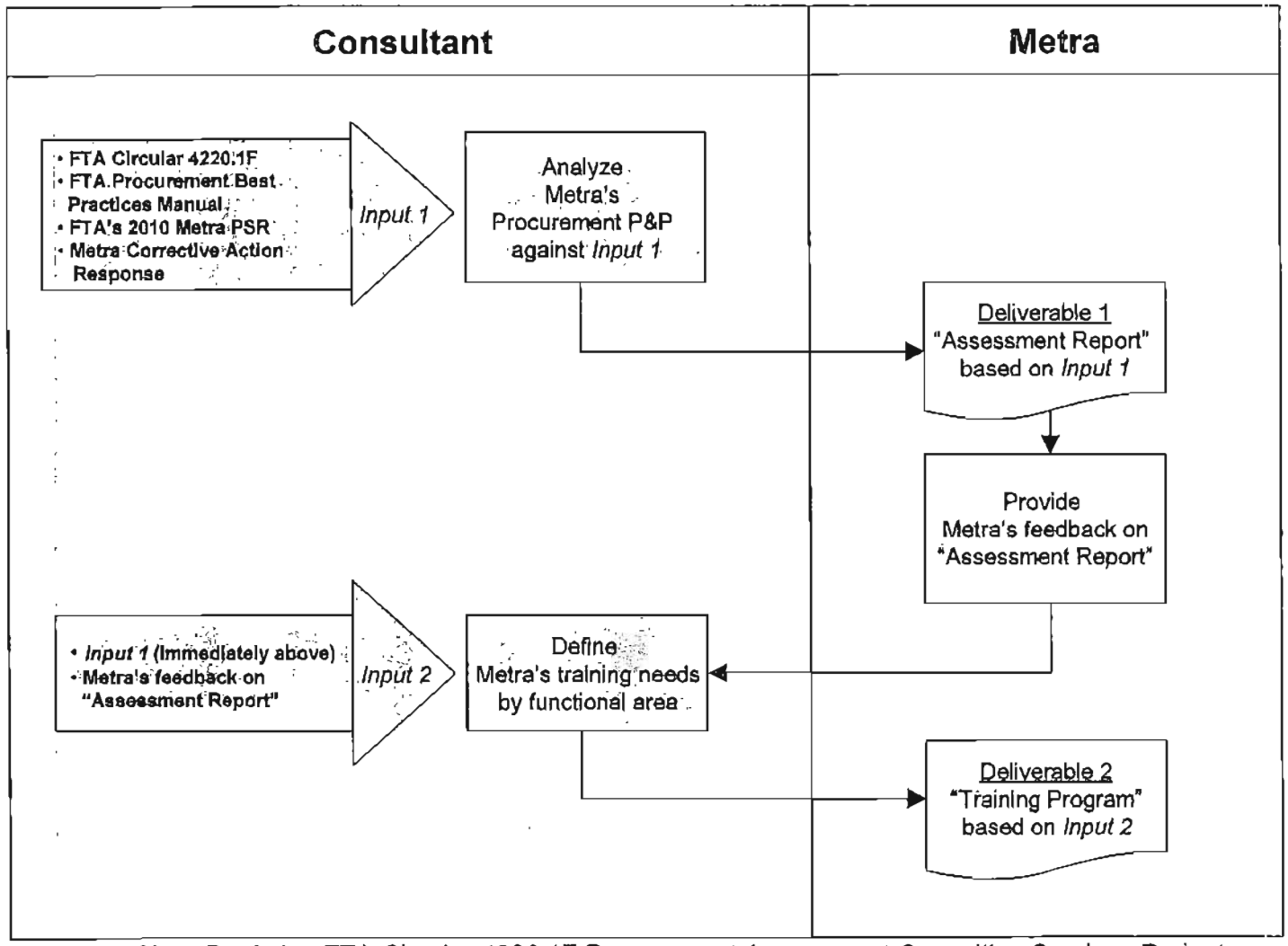
and personnel who have been tasked with understanding and complying with Federal third party contracting requirements.

To accomplish this objective, Metra seeks to obtain consulting services from an individual or firm appropriately equipped to perform accurate, complete and relevant analyses and evaluations (the "Assessment") to identify Metra's policy and procedure gaps, establish staff training requirements that appropriately addresses those gaps with input from Metra, and design a training program that fulfills those requirements.

II.B Goals

As listed and illustrated in this Section II.B, the selected Consultant will be required to fulfill these goals:

- Ensure the Consultant possesses a thorough understanding of:
  - FTA Circular 4220.1F
  - FTA Procurement Best Practices Manual
- Gain a thorough understanding of these 2010 documents:
  - FTA's 2010 Metra Procurement System Review (PSR) (attached to this RFP); and
  - Metra's Corrective Action Responses to Current Practices (to be provided by Metra at the issuance of the Notice to Proceed)
- Analyze and evaluate Metra's current Procurement Policies and Procedures (P&P) (to be provided by Metra at the issuance of the Notice to Proceed). The Assessment should identify areas of insufficiency or potential gaps based on Consultant's thorough understandings listed immediately above.
- Produce an "Assessment Report" documenting the Assessment's findings, including: areas of insufficiency and potential gaps in the Procurement Policies and Procedures. The intent is to establish or enhance the Agency's compliance with FTA Circular 4220.1F, alignment with FTA Procurement Best Practices as suitable for Metra and appropriate implementation of Metra's Corrective Action Response to FTA's 2010 Metra PSR.
- Utilizing Metra's feedback on the aforementioned "Assessment Report," assess staff training requirements needed to establish or enhance the Agency's FTA compliance and alignment with Procurement Best Practices as appropriate for Metra.
- Produce a "Training Program" that documents those Metra staff training requirements and a comprehensive plan for achieving them along specified functional lines and in a manner that addresses specified Challenges (see Section II.D, below.)



Flow Chart Depicting FTA Circular 4220.1F Procurement Assessment Consulting Services Project

II.C Deliverables Specifications

The selected Consultant will be required to provide Metra with two deliverables, specifications for which appear in Section II.C:

1. "Assessment Report" documenting Consultant's analysis and evaluation described in Section II.B – Goals.

2. "Training Program" documenting a structured plan for training Metra staff to fulfill the compliance criteria in Circular 4200.1F and all other inputs (see Section II.B).

II.C.1 Deliverable 1

Deliverable 1, which will be derived from the Assessment, will include recommending and consulting in designing procurement procedures and processes that are compliant with FTA Circular 4220.1F, including:

- Acquisition Planning and Strategy;
- Competitive Proposal Negotiations;
- Non-Competitive and Emergency Contract Negotiations;
- Negotiating Architectural/Engineering Service Contracts;
- Other Negotiated Procurement Methods;
- Negotiation Skills;
- Concessions;
- The Contracting Environment;
- The Contract Administration Team;
- Proactive Contract Administration;
- Managing Communication Between Contractor and Agency;
- The Influence of Pre-award Activity on Contract Administration;
- Modifying or Changing the Contract;
- Contractual Remedies Addressing Performance Issues;
- Resolution of Disputes; and
- Contract Closeout.

II.C.2 Deliverable 2

Deliverable 2, the "Training Program," must clearly define for each course module, the duration and class size; and for each class, include the topics to review and lesson format(s). The training will be delivered into multiple

tracks to accommodate the varying functional perspectives and knowledge bases.

Participants: The following personnel (including functional managers) will attend the training:

- 16 Procurement department personnel involved in third party contracting;
- 5 Engineering department personnel involved in A/E consulting contracts and construction contracts;
- 4 Mechanical department personnel;
- 5 Grant administrators and planners;
- 3 Audit department personnel;
- 4 Law department personnel;
- 4 DBE personnel; and
- Up to 8 additional employees from miscellaneous departments.

The Training Program must equip enrolled staff to achieve compliance with FTA Circular 4220.1F and the FTA Master Agreement, as well as alignment with FTA's Procurement Best Practices as appropriate for Metra. The Training Program must provide participants with a framework for examining basic issues pertaining to third-party contracting. Courses should be designed with exercises, training guides on all subjects, handouts/job aids, presentations, case studies, exams, practical exercises and other interactive training activities. Additionally, emphasis should be placed upon the Procurement System Review ("PSR") findings (conducted in 2010) and the correlating Metra Corrective Action Responses to the PSR findings.

The courses must be designed to strengthen Metra's procurement practices by improving the ability to perform cost and price analysis. The courses should focus on "best practices" to include: several hands-on exercises to augment explanations of acquisition strategies, using data from cost and price analysis and price and cost certification. The advantages and disadvantages of using different types of contracts and specifications used by Metra should be covered in great detail.

The Training Program should include in its training materials:

1. Comprehensive conceptual information about the procurement procedures;
2. Functional descriptions; and
3. Explicitly defined terminology related to the procedures, contract types and processes.

II.D Challenges

These challenges must be addressed in the "Training Program:"

1. Incorporate multiple functional areas, specifically: Procurement, Engineering, Mechanical, Grants, Audit, DBE and Law;
2. Address the needs of managers with a broad spectrum of functional knowledge and varying levels of exposure to the procurement process;
3. Accommodate staff members having varying levels of technology access and technical expertise; and
4. Fulfill Metra's requirement that training not impact essential operations.

II.E Proposal Requirements and Assumptions

II.E.1 Proposal Requirements

Metra will require the selected Consultant to propose a detailed approach defining how its assessments will be conducted and deliverables achieved. Therefore, each responder to this RFP must fulfill these requirements in the proposal:

1. Proposal Requirement One: Assessment Plan.
   Submit an overall description of anticipated analysis and evaluation ("Assessment") processes. This section of the proposal will:
   - Phase 1: Detail Consultant's approach for analyzing inputs (i.e., Input 1 described in Section II.B)
   - Phase 2: Define Consultant's step-by-step approach to conducting the Policies and Procedures assessment and development of Deliverable 1 ("Assessment Report");
   - Identify anticipated start and completion dates for each phase of the Assessment;
   - Depict Project Team hierarchy; and
   - Describe Consultant's proposed communication and reporting plan.

2. Proposal Requirement Two: Training Program Development Plan.
   Submit an overall Training Program Development Plan that will:
   - Detail Consultant's approach for defining the training requirements of Metra's staff; and
   - Define Consultant's step-by-step approach to developing Deliverable 2 ("Training Program").

II.E.2 Proposal Assumptions

1. Working Conditions
   This initial list of assumptions describes working conditions the Proposer can expect during the course of this project:

   a. Metra and Consultant will co-manage the project;
   b. Metra will establish all necessary committees to jointly plan the project and ensure project resources are available and committed to meet project schedules;
   c. A Materials Management Department Project Leader will be assigned to the project through all phases and activities;
   d. Consultant will have reasonable access to appropriate staff members including subject matter experts;
   e. Metra will review and provide changes/comments or corrections to the Training Program Plan within 15 business days after receipt of the Training Program. Consultant will then have 10 business days to resubmit the Training Program Plan with the requested changes; and
   f. All interaction with Metra staff will occur during Metra regular business hours, 8 a.m. to 5 p.m., Monday through Friday.
2. Track Structure
   For the purposes of the proposal, assume the following course track structure:
   a. There will be four tracks, with distinct enrollments (see Section II.C.2);
   b. Each track will be offered in two sessions (for a total of eight tracks); each session will be attended by one half of that track's enrolled personnel. The intent of this assumption is to ensure that each department has sufficient workforce capacity available for normal operations.
      - Track A - Procurement personnel
      - Track B - Engineering and Mechanical personnel
      - Track C - Grant and Audit personnel
      - Track D - Law and DBE personnel
   c. Up to eight additional employees from miscellaneous departments will be enrolled in these four tracks as appropriate.

II.F Contract

As a result of this Request for Proposal ("RFP"), Metra intends to award one contract for FTA Circular 4220.1F Procurement Assessment Consulting Services, but reserves the right to award more contracts or none. The project will be a firm-fixed price contract. The Proposer must

identify and describe deliverables consistent with the Proposer's project approach and methodology section as described in the proposal. Total fixed price must be included in the Statement of Offer.

II.G Reporting Requirements

With all invoice submittals, Metra will require an itemized report from the contractor on all matters pertaining to that specific invoice.

III TERM

Contract(s) awarded pursuant to this Request for Proposal shall be for a period of six (6) months from the date of award.

IV GENERAL REQUIREMENTS

IV.A Format

1. Submit Proposal in EIGHT (8) copies. One copy marked **"ORIGINAL" must contain the original signature copies**;
2. Provide all documents in 8.5" X 11" format; and
3. Mark the outside of your sealed proposal envelope: RFP-49109A.

IV.B General

1. Category Identification
   a. Proposal name and proposal number;
   b. Name of Proposer;
   c. Address and phone number of Proposer; and
   d. Proposer's manager or contact person, phone number and e-mail address.

2. Narrative
   a. Statement of project approach and methodologies to be used;
   b. Description of preliminary work plan and tasks; and
   c. Description of project management approach to be used.

3. Staff
   a. Identification of staff, roles, technical disciplines, and areas of expertise to be assigned to this contract; and
   b. Resumes of assigned staff members.

4. Experience
   a. Describe the firm's and its personnel's experience and expertise in the areas of FTA Best Procurement Practice Consulting/Training and project work scope. Describe all comparable project experiences;

b. Describe other pertinent project experience with transit or public sector organizations that may be applicable to assessing and training Metra personnel and consulting; and
c. Provide at least three (3) verifiable references for the consulting firm, and at least three (3) verifiable references for each staff member assigned to this project. Each reference will include the contact person's name and telephone number. References for assigned staff should be obtained from individuals involved in work performed within the last five (5) years.

IV.C Proposal Submissions

Proposals must be submitted to:

Mr. Steve Bauman
Contracting Agent
Professional Services/Contracts
Northeast Illinois Regional Commuter Railroad Corporation/Metra
11th Floor
547 West Jackson Blvd.
Chicago, IL 60601

IV.D Proposal Questions

Questions about this proposal, for both administrative and technical aspects, must be submitted by facsimile to:

Mr. Steve Bauman
Contracting Agent
Professional Services/Contracts
Northeast Illinois Regional Commuter Railroad/Metra
11th Floor
547 West Jackson Blvd.
Chicago, IL 60661
Fax: 312-322-6619

Questions are to be submitted **by fax only** and must be received before 4:00 P.M. on July 6, 2012.

For DBE questions only, the following individual may be contacted by telephone:

Ms. Janice Thomas
DBE Officer
(312) 322-6323

All interpretations Metra elects to give will be made in the form of written Addenda to the Proposal Documents, which Addenda shall become a part

of the Operation Agreement. All such Addenda will be furnished to all persons who obtained Proposal Documents.

IV.E Statement of Offer

1. By submitting your proposal you are stating that the proposal is good for 180 calendar days. Submit a cover letter stating that your offer is valid for 180 calendar days;
2. Please include the name, title, address, and telephone number of the individual authorized to negotiate and contractually bind the Proposer during the period of the proposal evaluation and contract finalization;
3. Total fixed price must be included in the Statement of Offer;
4. Exhibit 1B - Affidavits/Certifications must be signed, notarized, and returned with the proposal;
5. Exhibit 1C - DBE Compliance Requirements Form(s) as required; and
6. The successful Proposer will be expected to execute a contract substantially similar to the attached form/sample, Exhibit 1F. Metra will not negotiate any of the material terms or conditions of the contract.

V BASIS OF AWARD AND RESERVATION

V.A Evaluation Criteria

Proposals must be complete and adhere in all material respects to the required format and instructions to be considered. The written proposal, presentation, and responses to questions that arise during the interview, and any best and final offer ("BAFO") will be evaluated by Metra's Evaluation Committee. Proposals will be scored by the Evaluation Committee based upon a consensus score of the evaluation criteria. There will be a re-scoring by the Committee if presentations/interviews and/or BAFO's are conducted and the evaluation criteria will be based on the criteria stated below. The following criteria are listed in the order of importance (some of which may be of equal value):

1. Consultant's plan and detail on how it will address the scope of services;
2. Consultant's demonstrated expertise and experience in FTA Circular 4420.1F Consulting and Training;
3. Costs associated with the proposal;
4. Commitment of resources, including qualifications and experience of assigned staff;
5. Familiarity with public entities, ideally commuter rail, public transit, and rail transportation, as evidenced by examples of similar projects with such entities; and
6. References (see Section IV.B, paragraph 4(c)).

V.B Reservations

All criteria listed under the above Evaluation Criteria for this RFP will be used in the evaluation process to determine the most advantageous proposal. All proposals will be evaluated solely by Metra, which reserves the right to select for award the highest ranked firm on the basis of what is in Metra's best interest and/or gives the greatest benefits to Metra. Metra will solely be responsible in determining what is in its best interest and what provides Metra the greatest benefits. You must read and understand the solicitation and tailor your proposal to ensure compliance. Metra reserves the right to: (i) amend the solicitation; (ii) reject any or all proposals submitted; (iii) award by category, group of categories, or grand total; (iv) waive any informalities or minor defects; (v) accept any proposal as submitted with or without negations or interviews, and interview any proposer Metra deems appropriate; (vi) require revisions to,. corrections of, other changes to, or additional information for any proposal submitted as a condition to its being given further consideration; (vii) negotiate with proposers having a reasonable chance of being selected in any manner it deems fit as long as it is consistent with any applicable federal, state or Metra requirement; (viii) issue a revised RFP; (ix) negotiate with all proposers or negotiate with one or more proposers who come closest to complying with this RFP; (x) waive any informalities or defects in any proposal, whichever is in Metra's best interests as determined solely by Metra; and (xi) determine, in Metra's sole discretion, what is responsive, material, a minor or clerical irregularity, or mistake. Metra may request Best and Final Offers when appropriate. This competitive process may require you to submit additional information and otherwise cooperate with us. If you do not comply with requests for information and cooperate, Metra may reject your proposal. Metra is not responsible for and will not pay any costs associated with the preparation and submission of your proposal. No proposer shall have any rights against Metra arising at any state of the solicitation from any negotiations that take place, or from the fact that Metra does not select a proposer for negotiation, or because Metra chooses another proposer with whom to contract. If your firm is selected, you shall not commence, and will not be paid for any work performed prior to the date all parties execute the contract.

V.C Metra's Proposal Protest Procedure

Metra will use, if necessary, the applicable provisions of its Bid Protest Procedures (Procedures) for this RFP. References under the procedures to bid, bidders, and the lowest bidder shall mean proposal, proposers, and highest ranked proposal, respectively. The Proposer has the right to protest against the RFP. There are important time limits set forth in the

Procedures which are summarized here, but this paragraph is not meant to be a substitute for the Procedures. For a complete copy of Metra's Procedures and instructions on the applicable terms and provisions, contact the Contracting Officer. Any discrepancies between this paragraph and the Procedures shall be decided by applying the Procedures, except that deadlines stated below are specifically for the RFP. If you wish to protest this solicitation, the protest must be filed with Metra no later than (5) days before the Due Date. If you wish to protest the proposal evaluation, the protest must be filed with Metra no later than five (5) days after you have been notified that your proposal was rejected as non-responsive. If you wish to protest award of the Contract, the protest must be filed with Metra, in writing, no later than five (5) days after Metra notifies proposers, in writing or orally, of its intent to award the Contract.

VI GOVERNING LAW AND FORUM

This Request for Proposal and any resulting contract there from shall be governed by the laws of the State of Illinois, and venue for any disputes that may arise shall be either the Circuit Court of Cook County Illinois or the United States District Court for the Northern District of Illinois.

VII FOIA REQUIREMENTS

Metra is subject to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq., "FOIA"), and pursuant to FOIA, your proposal and any subsequent agreement is subject to disclosure. In addition, from time to time, Metra may be required to produce certain "public records" as defined in Section 2 of the FOIA, that are in the possession of or under the control of proposer/operator. Upon Metra's notification to proposer/operator of a request pursuant to the FOIA, proposer/operator will, within two (2) business days of Metra's notice, either (i) produce the public records, (ii) notify Metra, in writing, that additional time is required to produce the public records, or (iii) notify Metra, in writing, that the public records do not exist or have been destroyed. In the event that proposer/operator requires additional time to produce the public records, the written notification under (ii), above, will provide an explanation for the delay and the date when the public records will be received from proposer/operator by Metra. Proposer/operator agrees that in no event shall a delay to produce records exceed five (5) business days.

If any failure by proposer/operator to timely comply with a request for public records results in any adverse consequences to Metra, including, but not limited to, fines or penalties being imposed on Metra, said failure by proposer/operator shall be deemed a material breach of this Agreement,

and proposer/operator shall indemnify, defend, and hold harmless Metra for any damages, costs, liabilities, and fees (including attorney's fees) that result from such breach.

VIII EXHIBITS

The following Exhibits are attached hereto and made part hereof. In addition to this Request for Proposal, the Exhibits shall become a part of the contract resulting from this Request for Proposal:

Exhibit 1A – Public Notice of Request for Proposal
Exhibit 1B – Affidavits/Certifications *
Exhibit 1C – Metra Disadvantage Business Compliance Requirements
Exhibit 1D – Civil Rights Requirements
Exhibit 1E – Insurance Requirements
Exhibit 1F – Sample Professional Services Agreement
Exhibit 1G - FTA Contract Clauses
Exhibit 1H – FTA 2010 Procurement System Review Report

*** IMPORTANT NOTE: Exhibits 1B must be executed and included with your proposal submittal.**

EXHIBIT 1A

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
D/B/A METRA
METRA RFP NO. 49109A

The Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra desires to obtain sealed proposals for the following project:

Provide United States Department of Transportation, Federal Transit Administration (FTA) Circular 4220.1F Procurement Assessment Consulting Services.

NOTE:

IF YOU HAVE QUESTIONS CONCERNING THE AVAILABILITY OF PROPOSALS, PLEASE CONTACT OUR PLANROOM AT (312) 322-6673.

IF YOU HAVE TECHNICAL QUESTIONS ABOUT THE PROJECT PLEASE FAX STEVE BAUMAN AT (312) 322-6619. CUT OFF FOR QUESTIONS IS 4:00 P.M. (LPT), JULY 6, 2012.

If your firm has the necessary expertise in this field and is interested in receiving the detailed Request for Proposal, please visit METRA & BUSINESS at www.metrarail.com to download the documents or direct a letter to Mr. Steve Bauman, C.P.M., Contracting Agent, Metra, 547 West Jackson Boulevard, Suite 1100, Chicago, Illinois, 60661 via fax to (312) 322-6619.

ALL PROPOSALS MUST BE RECEIVED AT THE ABOVE ADDRESS "**NO LATER THAN**" 10:00 A.M.(LPT) on July 25, 2012.

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

D/B/A/METRA

Contracting Agent: Mr. Steve Bauman, C.P.M.

Exhibit 1-B

AFFIDAVITS/CERTIFICATIONS FOR CONSULTANTS

FILL IN THE BLANKS AND SUBMIT THIS FORM WITH PROPOSAL.
HAVE APPLICABLE SIGNATURES NOTARIZED ON LAST PAGE.

STATE OF _____

COUNTY OF _____

The Undersigned represents that s/he is_____("Undersigned") the
(Print Name)

_____ of _____
(Print President or Other Proper Title) (Print Name of Entity)

("Company" or "Undersigned") and is authorized to attest on behalf of himself/herself and

_____, and states as follows:
(Print Name of Company)

A. PROHIBITED INTERESTS AND CONFLICTS OF INTEREST.

1. PUBLIC OFFICER PROHIBITED ACTIVITIES ACT AFFIDAVIT.

The Company is the proposer submitting this proposal and that the proposer is in compliance with provisions set forth in the Public Officer Prohibited Activities Act, 50 ILCS 105/0.01, et seq., and to the best of its knowledge and belief, no person holding office, either by election or appointment under the laws or constitution of this State, is in any manner interested, either directly or indirectly, in his/her own name or in the name of any other person, association, trust, or corporation, in this contract or the performance of any work/services under this contract which such officer has been or may be called upon to act or vote.

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2. METRA'S CONFLICTS OF INTEREST ORDINANCE.
Pursuant to 4.03 of Metra's Bidding Regulations:

Members of the Board, officers, and employees of Metra, their spouses, their children, their parents, their brothers and sisters and their children, are prohibited from having or acquiring any contract or any direct pecuniary interest in any contract which will be wholly or partially performed by the payment of funds or the transfer of property of the Metra. Any firm, partnership, association, or corporation from which any member of the Board, officer, or employee of the Metra is entitled to receive more than seven and one half percent (7-1/2%) of the total distributable income, is prohibited from having or acquiring any contract or direct pecuniary interest in any contract which will be performed in whole or in part by payment of funds or the transfer of property of Metra.

Any firm, partnership, association, or corporation from which members of the Board, officers, employees of Metra, their spouses, their children, their parents, their brothers and sisters and their children, are entitled to receive in the aggregate more than fifteen percent (15%) of the total distributable income, is prohibited from having or acquiring any contract or direct pecuniary interest in any contract which will be performed in whole or in part by the payment of funds or the transfer of property of Metra.

Board members and employees are prohibited from participating in the selection, award, or administration of a contract supported by Metra funds, federal funds, or any other grant funds if a real conflict of interest or, to his or her knowledge, an apparent conflict of interest would be involved. A real or apparent conflict of interest would arise when any of the following has an interest in the entity selected for award: (a) an employee, officer, board member, or agent; (b) any member of his or her immediate family (as listed above in the first paragraph); (c) his or her business partner; or (d) an organization that employs, or intends to employ, any of the above. "Apparent" is defined under this paragraph as being one in which a person is an officer or director of an entity, or has an interest in the ownership or profits of an entity, and such interest appears substantial to a reasonable person. "Interest" is defined under this paragraph as a direct or indirect entitlement to receive any of the entity's profits.

In addition, Undersigned states that no officer of Metra has represented, either as an agent or otherwise, the proposer with respect to this application or bid for contract. Finally, Undersigned states that to best of its knowledge and belief, no officer of Metra has received or been offered from any person on behalf of the proposer, either directly or indirectly, any money or other thing of value as a gift, bribe, or means of influencing any vote or action in any official's capacity. Furthermore, Undersigned certifies that, to the best of its knowledge, it is in compliance with Metra's Bidding Regulations and is unaware of any of the foregoing persons having an interest prohibited by Section 4.03 of the Bidding Regulations.

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B. NON-COLLUSION AFFIDAVIT.

The Company is the proposer submitting this proposal and that such proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, organization or corporation; that such proposal is genuine and not collusive or a sham and that said proposer has not been a party to any agreement or collusion among bidders/proposers or prospective bidders/proposers in restraint of freedom of competition by agreement to bid a fixed price or otherwise, or to refrain from proposing, and has not, directly or indirectly, by agreement, communication, or conference with anyone, attempted to induce action prejudicial to the interest of Metra, or of any proposer or anyone else interested in the proposed contract.

C. CERTIFICATE FOR PROPOSAL.

As a part of its offer to contract for services to Metra, the Undersigned hereby certifies that neither the Company nor any of its principals are barred from proposing on the aforementioned contract as a result of a violation of either Section 33 E-3 or 33-4 of 720 ILCS 5/33 E.

D. CERTIFICATE OF DEBARMENT.

As the potential contractor for a primary contract, or subcontractor to a primary contractor for subcontracts over $100,000, the Undersigned certifies to the best of its knowledge and belief, the Company and its principals:

1. Are not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Debarred from federal contracts for violations of various public contracts incorporating labor standard provisions;

2. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, state, or local government entity;

3. (a) have not been convicted under the laws of Illinois or any other state of bribery or attempting to bribe any government officer or employee or have made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct. No business shall be barred from contracting with Metra as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business and: i) the business has been finally adjudicated not guilty; or ii) the business demonstrates to Metra, and Metra finds that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer, or high managerial agent on behalf of the business as provided in paragraph (2) of subsection (a) of Section 5-4 of the Criminal Code of 1961. For purposes of this Subsection (a), when an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and in accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct. Contractor hereby certifies that the contractor and its subcontractors are not barred from being awarded a contract or subcontract under this Section.

(b) are not convicted of a felony. No person or business shall do business with Metra from the date of conviction until 5 years after the date of completion of the sentence for that felony, unless no person held responsible by a prosecutorial office for the facts upon which the conviction was based continues to have any involvement with the business. Contractor hereby certifies the the Contractor is not barred from being awarded a contract under this Section.

4. Are not presently indicted for, or otherwise criminally or civilly charged by a government entity (federal, state or local) for any reason; or

5. Have not, within a three-year period preceding this proposal, had one or more public transactions (federal, state or local) terminated for cause or default.

(If the Undersigned is unable to certify to any of the statements in this certification, the Undersigned shall attach an explanation).

THE UNDERSIGNED CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF THE FEDERAL FALSE CLAIMS ACT ARE APPLICABLE THERETO.

E. CERTIFICATION OF RESTRICTIONS ON LOBBYING.

This certification is required to be completed with the solicitation if the proposal exceeds $100,000.00. Failure to return this certification with the solicitation may result in a determination that the offer is non-responsive or non-responsible.

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The Undersigned certifies to the best of its knowledge or belief that:

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

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

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

F. REVOLVING DOOR PROHIBITION.

The Undersigned has reviewed its list of employees (and subcontractors) involved in this procurement and it has no knowledge of any former Metra employee being involved in the solicitation process in violation of Section 4.05 of Metra's Bidding Regulations.

Section 4.05 states that all Metra Board members and non-contract personnel in specified positions are expressly prohibited, for a period of one (1) year after terminating employment with Metra, from engaging in any procurement activity with Metra. A "specified position" is one that is non-contract, is held for a period of six (6) months preceding such termination, is at a Grade P12 or above (including M Grades), and is not merely clerical or ministerial in nature. The prohibition includes, but is not limited to: lobbying the procurement process; specifying; bidding; or proposing bid, proposal, or contract documents on the part of the former employee or Board member, or in association with the former employee or Board member by or on behalf of any firm, partnership, association, or corporation affiliated with the former employee or Board member. The Undersigned certifies that the award and/or execution of a contract would not cause any violation of Section 4.05.

G. CONTINUING OBLIGATION TO INFORM METRA.

If Company acquires information after executing this certification that there may be an actual or apparent violation of any of the above Company shall promptly bring such information to the attention of Metra's procurement officer. Company shall thereafter cooperate with Metra's review and investigation of such information, and comply with any instruction it receives from Metra in regard to remedying the situation.

H. PENALTIES.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into the Contract pursuant to Metra's regulations and 31 U.S.C. 1352. A Company who makes a false statement, materials to the certification, is subject to termination for cause. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Company understands and agrees that the provisions of 31 U.S.C. 3801, et seq., apply to this certification and disclosure.

_____
(Print) Name of Company

By: _____ Date: _____
Signature of Person Making Affidavit (Undersigned listed above)

_____
(Print) Title of Person Making Affidavit

NOTARIZE HERE
Subscribed and sworn to before me
this _____ day of _____20___.

_____
Notary Public

CERTAIN SUBCONTRACTOR SIGNATURES REQUIRED ON NEXT PAGE

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SUBCONTRACTOR
DEBARMENT CERTIFICATION

NOTE: PRIMARY CONTRACTOR IS RESPONSIBLE FOR THIS FORM BEING SUBMITTED PRIOR TO AWARD. SUBCONTRACTOR(S) WITH SUBCONTRACTS OVER $25,000 MUST ALSO COMPLETE AND SIGN THE FOLLOWING:

STATE OF _____

COUNTY OF _____

The Undersigned represents that s/he is _____ ("Undersigned Subcontractor")
the (Print Name)

_____ of _____,
(Print "President" or Other Proper Title) (Print Name of Subcontractor Entity)

("Subcontractor" or "Undersigned Subcontractor") and is authorized to attest on behalf of himself/herself and

Subcontractor Entity by stating as follows:

1. As a subcontractor to a primary contractor for subcontracts over $ 25,000 the Undersigned Subcontractor certifies to the best of its knowledge and belief that the debarment statements in Section D above are truthful and accurate.
2. If Undersigned Subcontractor acquires information after executing this certification that there may be an actual or apparent violation of any of the above, Subcontractor shall promptly bring such information to the attention of Metra's procurement officer.
3. The provisions of Section I above are applicable.

_____
(Print) Name of Subcontractor Entity

By:_____ Date:_____
Signature of Person Making Affidavit (Undersigned above)

_____
(Print) Title of Person Making Affidavit

NOTARIZE HERE
Subscribe and sworn to before me
this_____day of_____20_____.

_____
Notary Public

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PROFESSIONAL SERVICES WITH NO ESTABLISHED GOAL

METRA'S DISADVANTAGED BUSINESS ENTERPRISE

COMPLIANCE REQUIREMENTS

The Northeast Illinois Regional Commuter Railroad Corporation, d/b/a Metra, is required to take all necessary and reasonable steps to ensure non-discrimination in the award and administration of contracts. Therefore, the federal regulatory provisions of 49 C.F.R. Part 26 apply to this Contract.

The apparent sucessful proposer must submiit its Department of Human Rights Contract ID Number; proposers may obtain a DHR Contract ID Number from the Public Contracts Division, Illinois Department of Human Rights, 100 West Randolph Street, 10th Floor, Chicago, Illinois 60601 (312) 814-2431, (312) 814-2432, or access website: www.state.il.us/dhr.

CONTRACTOR ASSURANCE

The Contractor makes the following assurance and agrees to include the assurance in each subcontract that the Contractor signs with a subcontractor:

> 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 federally 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 other such remedy as Metra deems appropriate.

PROMPT PAYMENT

The Contractor agrees to pay each subcontractor for satisfactory performance of its subcontract no later than fifteen (15) calendar days from the receipt of such payment that the Contractor receives from metra. The Contractor agrees further to return funds it has retained to each subcontractor within fifteen (15) calendar days after the subcontractors work is satisfactorily completed. Any failure to comply with this Section will be in material breach of this Contract, and Metra reserves all its rights in law and equity for such breach. In addition, such breach will be taken into consideration for the Contractor's responsibility status for future contracts with Metra. This clause applies bo both DBE and non-DBE prime contractors and subcontractors. Metra reserves the right to review the certified payrolls for all contractors working on this Contract.

Metra reserves the right to review the certified payrolls for the Contractor and all contractors working on this Contract.

CIVIL RIGHTS REQUIREMENTS (TITLE VI ASSURANCE):

The Contractor agrees to comply with and assures compliance by its sub-contractors at any tier with the following Civil Rights Requirements. The Contractor agrees to insure these requirements must be included within all contracts to its sub-contractors at any tier. Failure to implement or follow the provisions set forth in this Exhibit may result in the Contractor being placed in breach of the Contract terms and may result in Contract termination.

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

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

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

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C.§ 623 and Federal transit law at 49 U.S.C.§ 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

Metra

CONSULTANT INSURANCE REQUIREMENTS

REQUISITION NUMBER 49109A

EVENT PROCUREMENT ASSESSMENT CONSULTING SERVICES

Effective concurrently with the commencement of the work, the contractor/vendor shall obtain and maintain throughout the life of the work, the insurance coverage as noted below. Coverage must meet the requirements that follow on pages 1 to 3 of this Exhibit. With the exception of Professional Liability, all coverage needs to be written on an occurrence form and with an insurer carrying a minimum AM Best rating of at least A-/VIII.

TYPE OF COVERAGE	AMOUNT REQUIRED
1. WORKERS' COMPENSATION: Coverage A - Statutory Coverage B - $ 1,000,000	$ 1,000,000 Limits of Liability
2. COMPREHENSIVE GENERAL LIABILITY (BROAD FORM): Bodily Injury Liability & Property Damage Liability (combined)	$ 1,000,000 Each Occurrence $ 2,000,000 Aggregate
3. EXCESS COMPREHENSIVE GENERAL LIABILITY-EXCESS OF PRIMARY LIMITS (1), (2) and (4) Bodily Injury Liability & Property Damage Liability (combined)	$ 1,000,000 Each Occurrence $ 2,000,000 Aggregate
4. AUTOMOBILE LIABILITY: Bodily Injury Liability & Property Damage Liability (combined)	$ 1,000,000 Combined Single Limit
5. PROFESSIONAL LIABILITY:	$ 2,000,000 Each Occurrence $ 2,000,000 Aggregate
6. RAILROAD PROTECTIVE LIABILITY: Bodily Injury Liability & Property Damage Liability (combined)	$ N/A Each Occurrence $ N/A Aggregate
7. OTHER INSURANCE	$ N/A

Additional Insureds shall be as follows: The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra as now exists or may hereafter be constituted or acquired, and the Regional Transportation Authority, an Illinois municipal corporation.

METRA'S INSURANCE REQUIREMENTS APPLICABLE TO ALL POLICIES:

-Include a waiver of subrogation, thereby waiving your rights of subrogation against Metra and any additional insureds.

-Include the Additional Insured Endorsement for all coverages including products and completed operations.

-Be primary and non-contributory on all coverages.

-Not carry a deductible greater than $10,000. All deductibles applicable to the insurance coverage shall be borne by the contractor/vendor. The certificate of insurance shall clearly state how defense costs (also known as "allocated loss adjustment expenses") shall apply in terms of the deductible and the insurance limits. (SIR programs are prohibited, absent prior approval by Metra's Risk Management Department.)

-All subcontractors retained or hired for the work shall be required to maintain limits and term equivalent to those required of the prime contractor.

-All insurance policies must specify that they are not subject to cancellation, non-renewal, material change or reduction in coverage unless a minimum of sixty (60) days prior notification is given by the insurer, except for non-payment of premium wherein a ten (10) day notice will apply. Contractor/Vendor will immediately notify Metra of the cancellation, non-renewal, material change or reduction in coverage of any required insurance policy. Such notice shall be sent certified mail to Metra, care of Director of Risk Management, 547 W. Jackson, Suite 1500, Chicago, IL 60661.

-In no event, shall the failure by Metra to receive certificates of insurance required hereunder, or to receive them by the date(s) required hereunder, be construed as a waiver of the contractor/vendor's obligation to obtain the required insurance coverages. Failure by Metra to demand any certificate of insurance or other evidence of full compliance with the insurance requirements set forth herein, or failure by Metra to identify a deficiency in the evidence provided, shall not be construed as a waiver of the obligation to procure or maintain the insurance required hereunder. The acceptance of delivery by Metra of any certificate of insurance does not constitute approval or agreement that the insurance requirements have been met or that the insurance policies identified in the certificates of insurance are in compliance with such requirements.

METRA'S INSURANCE REQUIREMENTS – SPECIFIC CONDITIONS

Commercial General Liability Insurance

The coverage is to be no less restrictive that the latest filed Insurance Services Office (ISO) occurrence form.

The CGL policy shall include the following coverage limits when limits are indicated:

$2,000,000 per occurrence for completed operations & products liability
$2,000,000 per occurrence for personal injury and advertising injury
$1,000,000 per occurrence damage to rented premises

Automobile Liability Insurance

The Automobile policy shall include the following additional coverage limits:

Include "any" auto (i.e. all autos owned by the contractor/vendor as well as hired and non-owned autos used by the contractor/vendor and autos used by the contractor/vendors' employees while on Metra property).

$25,000 for Medical Payments
$500,000 for Property Damage (if not combined in single limit)

Workers Compensation and Employers Liability Insurance

Workers Compensation Insurance coverage should be at statutory limits and include where required:

-Other States Insurance
-USL&H Insurance
-Voluntary Compensation Insurance

As a minimum, the Employers Liability policy shall include coverage limits of:

$1,000,000 for bodily injury by accident
$1,000,000 for bodily injury by disease, each employee
$1,000,000 aggregate liability

Contact Information:

For additional information please contact Nancy McIntosh at 312-322-7073.

EXHIBIT 1F

PROFESSIONAL AND CONSULTING SERVICES AGREEMENT

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
D/B/A METRA
547 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60661

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AGREEMENT

FOR PROFESSIONAL AND CONSULTING SERVICES

This Agreement is entered into this_____day of _____,_____ in Chicago, Illinois, by and between the Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra, Metropolitan Rail (**"Metra"**), a public corporation under Illinois law, and _____(**"Consultant"**), having offices located at _____Consultant and Metra are sometimes collectively referred to as **"Parties."** In consideration of the promises and agreements set forth, the Parties agree:

1. SCOPE AND DESCRIPTION OF SERVICES.

Consultant will perform the following services (**"Work"**): _____

_____

as set forth in Exhibit 2, attached hereto.

2. COMPENSATION.

Metra agrees to pay, and Consultant agrees to accept as full payment for the Work, the prices set forth in Proposal attached as Exhibit 2 of this Agreement. Consultant shall be paid only for the actual Work performed at the prescribed rates during the preceding billing period, not to exceed the percentage of the Work completed as of the end of the billing period. The full payment for the Work shall not exceed $_____ (**"Total Price"**). The Total Price also includes the cost of all applicable taxes (where Metra is not exempt), bonds, if required, and other charges of every kind and nature. The Total Price shall not include, and Metra shall not pay, taxes or fees from which Metra is exempt. Metra is exempt from various federal taxes, all state and unit of local government taxes, and registration and license fees. Consultant shall promptly notify Metra, and afford it the opportunity before payment of any taxes, to contest said claims in the manner and to the extent it may elect, and to settle or satisfy such claims. Consultant shall submit all invoices on Metra Form #B100R107, which is incorporated into and made a part of this Agreement, along with all appropriate support documents, for all amounts to be paid by Metra under this Agreement. Invoices must be addressed to the "Accounts Payable Section" for payment and must show Metra Contract No. _____and Account No._____. Metra will pay complete and accurate invoices within thirty (30) days of receipt. If Consultant fails to follow the instructions under this paragraph, or any instructions subsequently issued for its invoices, Metra may, at its sole discretion, reject Consultant's invoices for that billing period, and withhold payment of those invoices until such billing period as Consultant has complied with the requirements of this paragraph. An

incomplete or inaccurate invoice will be deemed received only when completed and corrected to Metra's satisfaction. However, if the omission or inaccuracy is, in Metra's sole judgment, minor and inconsequential, Metra will use reasonable efforts to ascertain and pay the complete and accurate portion of the invoice. Payments are subject to audit and inspection as set forth in Section 9.B below.

3. PERFORMANCE OF THE WORK.

The term of this Agreement shall be from the date of execution until _____ _____.

A. NOTICE TO PROCEED. Consultant will, within fifteen (15) business days after Metra's issuance of a notice of award letter informing Consultant of its execution of this Agreement ("Notice of Award"), submit to Metra: (1) certificates of insurance from insurance carriers satisfactory to Metra, and in form, substance, and detail satisfactory to Metra; (2) if applicable, the signed subcontracts with DBE subconsultants; (3) a schedule for the project with submittal milestones; and (4) any other document stated elsewhere in this Agreement that is required prior to Metra's notification to Consultant to start the Work ("Notice to Proceed").

B. SCHEDULE.

1. Submission of Schedule. Time is of the essence and delays may have a direct and indirect cost to Metra's operations. As a condition to issuing the Notice to Proceed, Consultant shall submit a schedule, acceptable to Metra, showing submittal milestones for the Work. Consultant must adhere to and complete all Work by the time stated in the schedule approved by Metra. Consultant shall commence the Work promptly after receiving a Notice to Proceed from Metra.

2. Monthly Progress Reports. Consultant's schedule shall be updated and submitted to Metra in writing no less than monthly. Such report shall state whether or not the Work is progressing within schedule. If Consultant determines that the Work and milestones are not progressing within schedule, Consultant shall notify Metra of the reasons for the delay and identify each delayed activity (including duration and interrelationships between activities). In addition to any other remedy afforded to Metra, failure to submit monthly reports will be a default of this Agreement and is grounds for Metra to withhold payments until such reports are submitted.

3. Contents of Reports. Consultant shall not make any changes to the approved schedule, including the milestones, when reporting its progress in the monthly reports. The report information shall include the approved schedule dates and milestones and the following additional information:

a. Actual start dates;
b. Actual finish dates;
c. Activity percent completion;
d. Remaining duration of activities in progress;
e. Identified or highlighted critical activities and problem areas;
f. Summary of Work accomplished during the past update period;
g. Analysis of time lost/gained during the update period; and
h. Recommended solutions to current problems.

4. Recovery Schedule. In the event Consultant, in the reasonable judgment of Metra, is failing to meet the approved schedule, including milestones, Consultant shall submit a recovery schedule within seven (7) days of such notice from Metra. The recovery schedule shall set forth a plan to eliminate the schedule slippage. The plan must be specific to show the methods to achieve the recovery of time, i.e. increasing manpower, overtime, weekend work, employing multiple shifts. All costs associated with implementing the recovery schedule shall be borne by the Contractor, unless otherwise agreed to by Metra in writing. Metra will review the recovery schedule within 14 days of receipt. If the recovery schedule is rejected, Consultant must submit a revised schedule within 7 business days of rejection. In the event Consultant fails to submit an acceptable revised schedule, Metra reserves the right to terminate this Agreement for default or convenience.

5. Revised Schedule. Subject to equitable adjustments, Metra may require Consultant to revise the schedule for the following:

a. Changes in the Work;
b. Re-phasing of a project or any phase;
c. A change in the duration of the project, phase, or funding; and

d. Acceleration of the project or phase.

C. **DELAY**. If Consultant is delayed in the performance of the Work, Consultant must immediately, upon receiving knowledge of such delay, give written notice to Metra and request an extension of time for performance or completion of the Work. Metra shall examine the request and determine if Consultant is entitled to an extension of time because of an excusable delay. Excusable delays include acts of God or a public enemy, acts of Metra or a funding agency not resulting from Consultant's unacceptable services, fire, strikes, flood, and the like. No claim for damages shall be made by either party for excusable delays. Metra shall notify Consultant of Metra's decision in writing and that decision shall be final and binding. Delays that are not beyond Consultant's reasonable control are a material breach of this Agreement. Such delays may also affect Consultant's status as a responsible proposer or Metra's evaluation of Consultant's performance for future work for Metra. In any event, Consultant shall continue to perform the Work to the extent possible under the circumstances, and resume normal performance as soon as possible, whether or not an extension is granted. Metra shall not be obligated to grant extensions, whether or not excused.

D. **RESPONSIBILITY FOR AGENTS AND EMPLOYEES**. Consultant represents that it shall utilize the services of individuals skilled in the profession for which they are performing services for this Agreement. In the event that Metra determines, in its sole discretion, that any individual performing services for Consultant under this Agreement is not providing such skilled services, it shall notify Consultant and Consultant shall promptly replace that individual.

E. **LICENSES AND PERMITS**.

1. Consultant, or its employees who would perform services requiring a license, shall have and maintain any required license. With the prior written consent of Metra, Consultant may meet the license requirement through use of a subconsultant.

2. To the fullest extent possible under applicable law/codes, Consultant shall apply for and obtain all permits for the project being designed. In those instances where the Consultant is prohibited by applicable laws or codes from obtaining such permits, Consultant shall perform all preliminary work for permit applications to assist Metra, its contractor(s), or others (on behalf of Metra) to obtain the permit in the shortest period of time. Consultant shall cooperate with and assist Metra's contractor (awarded to construct the project) in reviewing and submitting permit applications, and obtaining permits.

F. **PROFESSIONAL AND PERSONAL SERVICES.** This Agreement is for professional and personal services. Metra has relied on representations made by Consultant on who will perform certain work either directly by Consultant or through a named subconsultant. Therefore, any subconsultant, outside associate, personnel, or consultant required by Consultant in connection with the services covered by this Agreement will be limited to those subconsultants, outside associates, personnel, and consultants who were specifically identified and agreed to during negotiations. If Consultant is unable to secure or retain such persons named by Consultant, Consultant shall not be relieved of its obligations to complete performance. Consultant shall obtain Metra's written consent before making any substitution for these or any other subconsultants, outside associates, personnel, or consultants. Consultant shall include this provision in its contracts with its first tier subconsultants to prevent further subcontracting without Metra's written consent.

G. **PAYMENT OF SUBCONSULTANTS.** Consultant agrees to pay each subconsultant under this Agreement, in proportion to the work completed by each one, no later than 15 days from the receipt of each payment Consultant receives from Metra. Consultant further agrees to return retainage payments to each subconsultant within 15 days after the subconsultant's work is completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from Metra. Consultant must resolve all payment disputes with its subconsultants expeditiously. If Consultant fails to pay its subconsultants in a timely manner, or fails to expeditiously resolve any payment disputes with its subconsultants, such failure may constitute a material breach of this Agreement.

H. **ASSIGNMENT.** Assignment or delegation of this Agreement by Consultant without the prior written approval of Metra is a material breach of this Agreement. This Agreement shall be binding on, and inure to the benefit of, the respective successors, assigns, heirs, and personal representatives of Metra and Consultant. Any successor to Consultant under this Agreement must be approved in writing by Metra, which approval Metra may grant or deny in its sole discretion. Any successor must agree to perform all terms, conditions, and requirements of this Agreement as a condition precedent to such succession.

4. DOCUMENTS FORMING THIS AGREEMENT.

All written information which Consultant has furnished to Metra in connection with Metra's request for proposals forms a part of this Agreement and the basis on which Metra has decided to award this Agreement to Consultant. Consultant hereby represents to Metra that all facts, plans, or promises contained therein, other than such as may be contradicted by or expressly superseded by Consultant's offer or last offer, are true, and Consultant acknowledges that Metra is entitled to rely thereon. This Agreement constitutes the entire Agreement between the Parties. All

amendments to this Agreement must be in writing and executed by the authorized officers of each party. The Parties further agree that this Agreement consists of the following:

1. This contract document and each of the following documents attached hereto or incorporated by reference into this Agreement:
   2. EXHIBIT 1 -
   3. EXHIBIT 2 -
   4. EXHIBIT 3 -
   5. EXHIBIT 4 -

5. TERMINATION.

Metra may terminate this Agreement at any time, with or without cause, by giving written notice to Consultant at the address specified above. Termination shall be effective upon receipt of such notice by Consultant through actual delivery in person, fax, or regular or certified mail.

A. CONVENIENCE. If Metra terminates this Agreement other than for breach by Consultant, Metra agrees to pay Consultant, and Consultant agrees to stop Work as stated in the notice and accept as its sole remedy, Consultant's unpaid costs expended to date of termination. After receipt of a notice of termination and except as otherwise directed by Metra, Consultant shall: (1) stop Work under this Agreement on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under this Agreement as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by such notice; (4) account for any property in its possession belonging to Metra, and dispose or return of such property as directed by Metra; and (5) generally act in such manner as is necessary to mitigate and minimize the amounts payable by Metra hereunder.

B. BREACH. Unless Consultant cures defaults within seven (7) calendar days after receipt of written notification of such default, Consultant shall be in total breach of this Agreement. If Metra terminates this Agreement for breach by Consultant, Consultant shall be liable for and reimburse Metra on demand for all damages incurred by Metra, including but not limited to, incidental and consequential damages, and Metra's cost for having the Work completed by another consultant or with Metra's own employees. In addition, Metra expressly reserves all of its rights and remedies under law and equity for Consultant's breach. If, after Metra terminates this Agreement for breach or default, it is determined that Consultant 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 Metra under Section 5.A. above.

6. INSURANCE.

Consultant shall obtain and continuously maintain the professional liability insurance specified in the insurance exhibit to the Request for Proposals covering all claims whenever made, arising out of this Agreement and/or performance of the Work. Certificates of this insurance and an additional insured endorsement shall be furnished from time to time to Metra upon its request. Metra is not obligated to issue a Notice to Proceed under Section 3.A until Metra has determined that the requirements of this Section have been satisfied.

7. ETHICS.

A. NON-COLLUSION. Consultant warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of Metra, or to any other consultant, for the purpose of obtaining this Agreement.

B. PROHIBITED INTERESTS.

1. No board member, officer, or employee of Metra shall have any interest, direct or indirect, in this Agreement or its proceeds during his/her tenure.

2. No member or delegate to the Illinois General Assembly or the Congress of the United States shall be admitted to any share or part of this Agreement, or to any benefit arising from it.

C. AFFIDAVIT/CERTIFICATIONS. Consultant reaffirms the information contained in the Affidavit/Certification exhibit and, to the best of Consultant's knowledge, the exhibit is still accurate. If Consultant becomes aware, at any point throughout the duration of this Agreement, that any statement or information provided by the Affidavit/Certification exhibit is inaccurate or is no longer true, Consultant shall immediately notify Metra and identify the inaccurate or false statement or information.

D. STATE OF ILLINOIS GIFT BAN ACT. Consultant shall comply with the applicable provisions of the State of Illinois Gift Ban Act, 5 ILCS 430 (Article 10) et seq., and refrain from providing gifts to Metra's employees in violation of Metra's Gift Ban Policy, which is incorporated herein by reference.

E. CONFLICTS OF INTEREST. Consultant agrees that it and its subconsultants are under a continuing obligation to disclose any real, potential, or apparent personal or organizational conflict of interest to Metra. Metra employees are prohibited from participating in the selection, award, or administration of a contract or subcontract supported by Metra, federal, or other grant funds if a real or apparent conflict of interest would be involved. In addition,

unless approved in writing by Metra and/or any applicable Funding Agencies (as defined below), no contract or subcontract for the construction of a project or the acquisition of additional services or products related to this Agreement shall be awarded to any firm that would create, as determined by Metra in its sole discretion, any real, potential, or apparent personal or organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract or subcontract may, without some restriction, result in an unfair competitive advantage or impair the objectivity of Consultant in performing the contract work. This clause shall survive the termination of this Agreement.

8. EMPLOYMENT AND CIVIL RIGHTS.

A. ILLINOIS EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS.

In the event of Consultant's non-compliance with the provisions of this equal employment opportunity clause, the Illinois Human Rights Act ("**Act**"), or the rules and regulations of the Illinois Department of Human Rights ("**Department**"), Consultant may be declared ineligible for future contracts or subcontracts with the State of Illinois, or any of its political subdivisions, or municipal corporations; and this Agreement may be canceled or voided in whole or in part; and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Agreement, Consultant agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate action to rectify such underutilization;

2. That, if it hires additional employees in order to perform this Agreement or any portion thereof, it will determine the availability (in accordance with the Department's rules and regulations) of minorities and women in the area(s) from which it may reasonably recruit, and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized;

3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service;

4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of Consultant's obligations under the Act and the Department's rules and regulations. If any such labor organization or representative fails or refuses to cooperate with Consultant in its efforts to comply with such Act and rules and regulations, Consultant will promptly so notify the Department and Metra, and will recruit employees from other sources when necessary to fulfill its obligations thereunder;

5. That it will submit reports as required by the Department's rules and regulations, furnish all relevant information as may from time to time be requested by the Department or Metra, and in all respects comply with the Act and the Department's rules and regulations;

6. That it will permit access to all relevant books, records, accounts, and work sites by personnel of Metra and the Department for purposes of investigation to ascertain compliance with the Act and the Department's rules and regulations;

7. That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subconsultant in the same manner as with other provisions of this Agreement. Consultant will be liable for compliance with applicable provisions of this clause by such subconsultants, and further it will promptly notify Metra and the Department in the event any subconsultant fails or refuses to comply therewith. In addition, Consultant will not utilize any subconsultant declared by the Department to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations; and

8. That Consultant will have written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under state law; (iii) a description of sexual harassment, utilizing examples; (iv) Consultant's internal complaint process including penalties; (v) the legal recourse, investigative, and complaint process available through the Department and the Human Rights Commission

("Commission"); (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of the Act. A copy of the policies shall be provided to the Department upon request.

B. FEDERAL CIVIL RIGHTS REQUIREMENTS. The requirements of this Section flow down to Consultant and it's subconsultants at every tier.

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

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

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

Consultant agrees to comply with any implementing requirements FTA may issue.

b. Age - In accordance with 29 U.S.C. § § 621 et seq., 42 U.S.C. §§ 6101 et seq., and Federal transit law at 49 U.S.C. § 5332, Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Consultant agrees to comply with any implementing requirements FTA may issue.

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

3. Consultant agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to the project, and Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

C. DISADVANTAGED BUSINESS ENTERPRISE. In connection with the performance of the Work, Consultant will cooperate with Metra in meeting its commitments and goals with regard to the maximum utilization of disadvantaged business enterprises, and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for any subcontract work under this Agreement.

D. INDEPENDENT CONTRACTOR. Consultant shall be an independent contractor. Services performed pursuant to this Agreement are not rendered as an employee of Metra. Amounts paid pursuant to this Agreement do not constitute compensation paid to an employee.

E. REVOLVING DOOR PROHIBITION. Consultant has reviewed the Affidavit/Certification exhibit and has no knowledge of any former employee or board member being involved in this solicitation process in violation of Section 4.05 of Metra's Bidding Regulations. All former Metra board members and certain employees are expressly prohibited,

for a period of one (1) year after leaving Metra's employ, from engaging in any procurement activity with Metra.

F. **CONFIDENTIALITY**. Any documents or information obtained by Consultant from Metra or created by or on behalf of Consultant in connection with this Agreement shall be kept confidential and shall not be provided to any third party unless disclosure is approved in writing by Metra, or is required by court order or court rule. Consultant shall require its subconsultants, if any, to maintain the confidentiality of Metra's information and documents.

9. **RECORDS**.

A. **RETENTION**. Consultant shall maintain records, including those records required under the Compensation Section above, to show its time and costs, and shall submit monthly progress reports describing the portion of the Work already performed and anticipated during the next time period. On 15 days notice from Metra, all time sheets, billings, and other documentation used in preparing said progress reports shall be made available for inspection, copying, and auditing by Metra at any time during normal business hours, at 547 West Jackson Boulevard, Chicago, Illinois 60661. Consultant shall maintain, for a minimum of five (5) years after the completion of this Agreement, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this Agreement. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of Metra for the recovery of any funds paid by Metra under this Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

B. **AUDIT AND INSPECTION**.

1. Consultant agrees to permit, and shall contractually require all of its subconsultants at all tiers to permit, the authorized representatives of Metra or the Funding Agencies (as defined below), if applicable, to inspect and audit all work sites, work materials, payrolls, books, accounts, records, supporting documents, and any other documents involving this Agreement.

2. All costs and rates charged by Consultant shall be supported by properly executed payrolls, time records, invoices, vouchers, orders, contracts, or other documents evidencing in detail the nature and propriety of the charges.

3. Costs incurred by Consultant shall be eligible for reimbursement under this Agreement if and to the extent they meet all of the requirements set forth below. They must:

   a. be in conformity with all laws, regulations, and guidelines prescribed by the Funding Agencies (as defined below);

b. be made in conformance with the scope and provisions of this Agreement;

c. be necessary in order to accomplish the Work;

d. be in conformance with the cost principles for allowable direct and indirect costs and rates used by Metra for the professional services specific to this Agreement. Metra may, in its sole discretion, accept and use the cost principles established by any applicable Funding Agency;

e. be documented to the satisfaction of Metra; and

f. be treated uniformly and consistently under accounting principles and procedures approved or prescribed by Metra.

4. Metra's payment of any costs and rates pursuant to this Agreement shall not constitute a final determination by Metra of the allowability of such costs and rates until an audit under the provisions of this Agreement has been certified as completed or waived by Metra. In addition, such payments made prior to audit or waiver thereof shall not constitute a waiver of the breach of any terms of this Agreement by Consultant.

5. The close out of this Agreement does not alter in any way the reporting and retention requirements stipulated herein and does not alter Consultant's obligation to return any monies due under this Agreement on the basis of any later audit or other review.

6. If Metra determines after an audit that Consultant's direct or indirect costs or rates submitted hereunder are expressly unallowable under the express provisions of this Agreement, Consultant shall refund to Metra: (a) the amount of the disallowed costs and rates and (b) simple interest based on the prime rate to be computed on the amount Consultant was paid (whether as a progress or billing payment) in excess of the amount to which Consultant was entitled. Interest will begin to accrue fifteen days from the date Metra notifies Consultant in writing of the excess amount paid. The interest rate will be two points above the prime rate published in the "Money Rates" table of the Wall Street Journal on the day the notice of disallowed costs is sent to Consultant. However, Metra may, in its sole discretion, waive all or part of the interest.

C. **OWNERSHIP**. Metra shall retain ownership of all plans, specifications, related documents, computer disks, software, and all other work product (collectively referred to as **"Work Product"**), including, but not limited to, those mentioned above, prepared by or purchased by Consultant in connection with the Work and this Agreement. Metra and the Funding Agencies (as defined below) shall exercise such rights to the Work Product without

further restriction or limitation and without further compensation to Consultant. Upon request, Consultant shall, at its sole cost, arrange, index, and deliver all Work Product to Metra. However, the ideas, concepts, methodologies, processes, inventions, and tools (including hardware and software where applicable) (collectively referred to as "**Tools**") that Consultant previously developed and brings to Metra in furtherance of performance of the Work, shall remain the property of Consultant and shall not be defined as Work Product. Consultant, however, grants to Metra a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use (or permit Metra's agents to use on Metra's behalf) such Tools, but solely for the benefit of Metra when using the Work Product.

D. **COPYRIGHT AND RIGHTS IN DATA.** This Agreement adopts the United States Department of Transportation, Federal Transit Administration ("**FTA**") policy on Patent Rights and rights in data and copyrights as set forth in Part II of the standard FTA grant agreement enforceable between Metra and the FTA.

E. **FOIA REQUIREMENTS.** Metra is subject to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq., "FOIA"), and pursuant to the FOIA, this Agreement is subject to disclosure. In addition, from time to time, Metra may be required to produce certain "public records," as defined in Section 2 of the FOIA, that are in the possession of or under the control of [Company]. Upon Metra's notification to [Company] of a request pursuant to the FOIA, [Company] will, within two (2) business days of Metra's notice, either (i) product the public records, (ii) notify Metra, in writing, that additional time is required to produce the public records, or (iii) notify Metra, in writing, that the public records do not exist or have been destroyed. In the event that [Company] requires additional time to produce the public records, the written notification under (ii), above, will provide an explanation for the delay and the date when the public records will be received from [Company] by Metra. [Company] agrees that in no event shall a delay to produce public records exceed five (5) business days.

If any failure by [Company] to timely comply with a request for public records results in any adverse consequences to Metra, including, but not limited to, fines or penalties being imposed on Metra, said failure by [Company] shall be deemed a material breach of this Agreement.

10. **INDEMNIFICATION AND WAIVER.**

A. To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and save harmless Metra, the Commuter Rail Division of the Regional Transportation Authority, and their respective directors, officers, agents, and employees (cumulatively referred to as the "**Indemnified Parties**") from and against all loss, claims, liability, cost, and expense (including attorney's fees and other reasonable expenses of litigation or arbitration) which any of them may incur, sustain, or be subject to on account of: (i) all claims, including claims for injury to person or death or damage to property, suffered by any of them which result from or arise out of Consultant's performance of this Agreement or Consultant's failure to perform under this Agreement; and (ii) where applicable to the scope and description of services performed by

Consultant, injury to any person or death or property damage arising out of: (a) any defect or alleged defect of design, regardless of whether the relevant work or design was made by Consultant or a subconsultant, and regardless of the extent to which Metra may have approved or participated in any design work; or (b) any negligence in Consultant's oversight or contract administration. Consultant, however, shall not assume the risk of injury to person (including death) and damage to property and shall not indemnify and save harmless the Indemnified Parties from and against any loss, liability, cost, and expense (including costs of litigation and attorney's fees) to the extent such injury (including death), damage, loss, liability, cost, or expense is caused by the gross negligence or willful misconduct of the Indemnified Parties.

B. Consultant hereby binds itself, its successors, and assigns, to indemnify, defend, and hold harmless the Indemnified Parties from all claims, loss, damages, or expenses (including attorney's fees) for alleged infringement of patent, trademark, or copyright laws and rights, arising from any material or design specified in, or supplied pursuant to, this Agreement.

C. Consultant agrees that the above indemnification includes the Illinois Department of Transportation ("**IDOT**"), FTA, and the Regional Transportation Authority ("**RTA**") (collectively, "**Funding Agency**" or "**Funding Agencies**") if those Funding Agencies participate in the funding of this Agreement.

D. To the fullest extent permitted by law and except to the extent caused by the Indemnified Parties' gross negligence or willful misconduct, Consultant waives all claims for damage to property or person (including death) sustained by Consultant as a result of Consultant's performance of the Work. The obligations, rights, and remedies of this Section 10 shall survive the termination of this Agreement and the completion of the Work.

E. In the event any dispute or claim, related to this Agreement, should arise between the parties, each party agrees to exercise good faith efforts to resolve the matter fairly, amicably, and in a timely manner.

F. Nothing in this Section 10 is intended to violate the provisions of the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq., and this section is not intended to be an indemnification of Metra's or its employees' own negligence to the extent such indemnification would be in violation of such provisions.

11. ACCURACY OF WORK.

A. **REVISIONS REQUIRED**. Metra will be relying upon Consultant's expertise to provide accurate work. Thus, Consultant shall be responsible for the accuracy and conformity of the Work with applicable state, federal, and local laws, codes, and permit requirements. Consultant shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts, and shall do so without additional compensation. Consultant shall

be governed by that degree of care, skill, and diligence that the other reputable members of his or her profession would ordinarily exercise under similar circumstances within the State of Illinois. In addition to any other rights and remedies Metra may have, Consultant shall be responsible for any damages incurred as a result of errors, omissions, and/or negligent acts, and for any losses or cost of repair or remedy arising out of such errors, omissions, and/or negligent acts caused by Consultant, its employees, agents, and subconsultants. Neither Metra's review, approval, payment, nor acceptance of the Work required under this Agreement shall constitute or operate as a waiver relieving Consultant of the professional responsibility for subsequent correction of errors and omissions and/or of any rights under this Agreement. Consultant shall be liable for all damages to Metra caused by Consultant's negligent performance of any services and for subsequent correction of any such errors or omissions, or for clarification of any ambiguities. The obligations, rights, and remedies of this Section 11 shall survive the termination of this Agreement and the completion of the Work.

B. **NOTIFICATION OF ERROR.** Metra will notify Consultant of any error or omission believed by Metra to be caused by the negligence of Consultant as soon as practicable after discovery. Notification may be given by the most practical means deemed suitable by Metra. Consultant will designate and keep current the name of an individual with proper address and telephone number for purposes of notification hereunder. The notification will advise Consultant of the nature of the matter, the action sought from Consultant, and the time constraints required for response. In the event it is later determined that Consultant was not negligent, Consultant will be compensated for additional services performed in accordance with the compensation provisions of this Agreement.

C. **PROJECT MANAGEMENT PLAN/QUALITY MANAGEMENT PLAN.** If applicable, Consultant shall conduct all Work according to Metra's latest Project Management Plan and Quality Management Plan.

12. FUNDING.

A. **SUBJECT TO APPROPRIATIONS.** If this Agreement is for a period of longer than one year, it is subject to the appropriation of funds by Metra's Board of Directors for each year beyond the first year of this Agreement.

B. **SUBJECT TO FINANCIAL ASSISTANCE.** Payments to Consultant under this Agreement might be funded in part by financial assistance from one or more of the Funding Agencies. If any Funding Agency fails to approve this Agreement or to provide financial assistance in the amounts required to fully fund payments to Consultant, Metra reserves the right to terminate this Agreement. This Agreement is subject to the provisions of the financial assistance agreements between Metra and the Funding Agencies, and in the event of conflict between such Funding Agency agreements and this Agreement, the Funding Agency agreements shall control.

Consultant acknowledges that it has had the opportunity to review and copy the Funding Agency agreements before executing this Agreement. Pursuant to the applicable provisions of Metra's Master Agreement with the FTA, Metra gives notice to Consultant that Federal requirements may change, and the changed requirements will apply to this Agreement as required.

C. **NO LIABILITY.** The Funding Agencies shall not be subject to any obligations or liabilities to Consultant or its subconsultants or any other person not a party to this Agreement.

D. **DESIGN WITHIN FUNDING LIMITS** .

1. If this Agreement is for design services, Consultant shall accomplish the design services required under this Agreement so as to permit the award of a contract, using standard Metra procurement procedures for the acquisition, construction, or manufacture of any real or personal property designed at a price that does not exceed the estimated construction or manufacturing contract price as set forth by Metra. The contract estimate for the procurement or construction contract shall be established as part of the Notice to Proceed or communicated to Consultant in writing at a later date. When bids or proposals for the construction or procurement contract are received that exceed the estimated price, Consultant shall perform such redesign and other services as are necessary to permit contract award within the established construction or procurement contract price. These additional services shall be performed at no increase in the price of this Agreement. However, Consultant shall not be required to perform at no increase in the price of this Agreement if Metra determines that the unfavorable bids or proposals are the result of one of the following: (a) events beyond Consultant's reasonable control; (b) an increase in material cost which could not have been anticipated by reasonable consultants within the industry; or (c) an undue delay by Metra in issuing the construction or procurement solicitation.

2. Consultant will promptly advise the Contracting Officer if Consultant finds, at any time during the Work, that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design the real or personal property within these limitations. Upon receipt of such information, Metra will review Consultant's revised estimate of construction cost. If Metra determines that Metra's estimated construction or procurement contract price is so low that award of a construction or procurement contract (not in excess of such estimate) is improbable, Metra may either: a) authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated

construction or procurement contract price, or b) adjust its estimated contract price. Consultant's continued performance shall mean acceptance of the above changes or adjustments by Metra. If Metra determines Consultant's cost estimates are reasonable, but does not accept them, Metra may either terminate this Agreement for convenience or release Consultant from the requirements of this Section.

13. CONTRACT CHANGES. Any change, modification, change order, or amendment (hereinafter "Contract Change") to this Agreement must be in writing and approved and signed by Metra's Executive Director or his designee, where authorized. Contract Changes can include, but are not limited to, changes to scope, time extensions, cost, contract terms, or any combination thereof. Consultant shall be liable for satisfactorily correcting, and/or all costs resulting from, any change not ordered in writing and signed by the Executive Director or his authorized designee. Disagreements that cannot be resolved with negotiations shall be resolved in accordance with the Disputes clause.

A. CHANGE ORDERS. By written order, at any time, and without notice to the surety, the Executive Director may, subject to all appropriate adjustments, make changes to the general scope of this Agreement ("Change Order").

B. CHANGE ORDER PROCEDURES.

1. Either Metra or Consultant may initiate a Change Order.

2. Metra shall prepare and when appropriate, issue the written Change Order in conformance with Metra's applicable administrative procedures for Change Orders. Consultant shall supply all requested information, proposals, and any supporting back-up documentation.

3. Consultant Initiated Change Orders

   a. Within fifteen (15) days of when Consultant knows or should have known a cause for a Change Order, Consultant shall send Metra a notification that it intends to submit a Change Order request ("Change Order Notification" or "NCO").
   b. The NCO shall provide Metra with sufficient explanation to understand:
      1. the nature of the prospective Change Order request; and
      2. the rational or cause.
   c. The purpose of the NCO is not to approve or disapprove a Change Order, but to provide Metra with additional time to research the issues and thus expedite the Change Order process.

d. Within seven (7) business days of receipt of the NCO, Metra shall inform Consultant whether it believes the potential Change Order request merits further discussion.

e. Metra's response to the NCO shall not be relied upon as approval of a yet to be submitted Change Order, including any terms, scope, prices, or negotiated hours.

f. Unless waived by Metra in writing, a Change Order request will not be processed without the prerequisite NCO submittal.

4. After receiving a NCO response from Metra Consultant shall send, if appropriate, the Change Order request complete with all pertinent drawings, prospectus, schedule breakdown, and cost data to Metra's project manager.

C. INELIGIBLE CHANGE ORDER COSTS.

1. The parties acknowledge that costs incurred by Consultant in response to Metra's comments or changes to NCO submitted for Metra's review are not eligible for a Change Order, and such costs are already incorporated into Consultant's fees.

2. Notwithstanding the above, Consultant must submit a NCO within five (5) business days if it believes that Metra's comments or changes are beyond the work bargained for by the parties and eligible for a Change Order. Prior to incorporating any Metra comments or changes that Consultant believes are entitled to a Change Order, Consultant must wait for Metra's response to the NCO.

D. CONSULTANT TO CONTINUE WORK.

Notwithstanding the above, Metra may require Consultant to proceed with any Contract Change. Accordingly, pursuant to the Disputes Clause requiring continued performance of the Work, Consultant shall perform work as set forth in Metra's Contract Change. Failure of the parties to agree to an adjustment in price or time shall not excuse Consultant from proceeding with the Work as changed. By proceeding with the work as directed by Metra, Consultant shall not be deemed to have prejudiced any claim for additional compensation or an extension of time for completion.

E. CONTRACT CHANGE EFFECTIVE DATE.

Consultant will first analyze any proposed Contract Change request to determine the latest calendar date wherein the change incorporation must commence to minimize (preferably eliminate) any

contract time extension. Consultant will immediately notify Metra of this "Effective Date" and the prospective schedule impact to permit timely review by Metra staff of overall impact.

14. DISPUTES.

A. DISPUTE RESOLUTION. All claims, disputes and other matters in question between Consultant, Metra, and subconsultants arising out of, or relating to, this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Arbitration Rules of the American Arbitration Association then existing, as modified herein, unless the parties mutually agree otherwise.

B. JOINDER. Metra, Consultant (or any other architect, engineer, or construction manager), subconsultants, contractors, surety, subcontractors, or any material suppliers who have an interest in the dispute shall be joined as parties to the arbitration. Metra will endeavor to require any appropriate third party to be subject to joinder. Consultant's contracts with its subcontractors shall also require such joinder.

C. AUTHORITY OF THE ARBITRATOR. The arbitrator(s) shall have authority to decide all issues between the parties including, but not limited to, claims for extras, delay and liquidated damages, matters involving defects in the Work, rights to payment, and whether the necessary procedures for arbitration have been followed. The parties expressly agree that the arbitrator(s)' authority is limited to interpretation and application of the specific terms of the Agreement between the parties and the applicable laws of the State of Illinois and to deviate from same constitutes a manifest disregard of the law. The arbitrator(s) shall have no authority to add to, take from, or modify any of the provisions of the contract between the parties.

D. FINAL BINDING DECISION. The foregoing agreement to arbitrate and any other agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement, shall be specifically enforceable under the prevailing arbitration law. Subject to a Funding Agency's consent required below, the award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

E. DEMAND FOR ARBITRATION. The written demand for arbitration shall be served upon the other party to the arbitration and with the American Arbitration Association ("AAA") within ten (10) business days after receiving written notice of Metra's final decision with which it disagrees. If the parties mutually agree, they may extend the time to file a written demand for arbitration in order to engage in additional negotiations.

F. WORK SHALL CONTINUE. Unless otherwise agreed in writing by Metra, all parties shall diligently and in good faith carry on the work and timely perform their duties during any

negotiation or arbitration proceedings, and Metra shall continue to make payments of any uncontested invoices as required by the Agreement.

G. **JURISDICTIONAL CHALLENGE.** If any proceeding is brought to contest the right to arbitrate and it is determined that such right exists, the losing party shall pay all costs and attorneys' fees incurred by the prevailing party.

H. **ADDITIONAL RULES.** In addition to the Construction Industry Arbitration Rules of the American Arbitration Association applicable to any arbitration hereunder, the following shall apply:

1. Pleading. Promptly upon the filing of the arbitration, each party shall be required to set forth in writing and to serve upon each other party a detailed statement of its contentions of fact and law.

2. Discovery. All parties to the arbitration shall be entitled to the discovery procedures and to the scope of discovery applicable to civil actions under Illinois law, including the provisions of the Code of Civil Procedure and Illinois Supreme Court rules applicable to discovery. Such discovery shall be noticed, sought, and governed by those provisions of Illinois law.

3. The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein.

4. These additional rules shall be implemented and applied by the arbitrator(s).

I. **FEES AND EXPENSES.** The fees and expenses of the arbitration proceedings, i.e. judge's fees, reporter fees, and other AAA's fees, shall be divided equally between Metra and each party to the arbitration. Each party shall pay its own personally incurred fees and expenses, including its own attorney and witness fees.

J. **CONSENT BY FUNDING AGENCIES.** The parties agree that upon the submittal of a claim for arbitration, Metra shall promptly notify the appropriate Funding Agency, if any. If in the event the agreement between the Funding Agency and Metra prohibits the use of arbitration as a dispute resolution process, Metra shall promptly notify the parties, and all arbitration activities shall cease. Pursuant to Funding Agency grant conditions, any settlement or decision must be reviewed and approved by the Funding Agency before it is binding on Metra. The parties may then pursue any claim in a court of law.

15. SAFETY REQUIREMENTS

A. **COMPLIANCE.** Before entering Metra property or property owned by other railroads that is relevant to this Agreement, Consultant and its subcontractors at any tier who meet the definition of a Roadway Worker below shall cause their employees to comply with Metra's Safety Rules and General Procedures (or the applicable safety rules of the railroad where the Work is being conducted). If Consultant or its subcontractors perform Work on Metra trackage or trackage of another railroad as part of this Agreement (or within 25 feet of Union Pacific & BNSF trackage), Consultant, subcontractors at any tier, and their respective employees must complete Metra's Contractors Orientation Safety Program located at "contractororientation.com" or the safety orientation of the railroad where Work is being conducted. The web-master will charge an $11.00 fee for each of Consultant's and its subcontractors' employees, and will furnish a contractor orientation course completion card which must be carried at all times by the employee while on railroad trackage where Work is being conducted.

B. **DEFINITION.** A Roadway Worker is defined as: Any employee of the railroad, or of a contractor to the railroad, whose duties include and who is engaged in the inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, roadway facilities, or electric traction systems, or in the operation of roadway maintenance machinery on or near track, with the potential of fouling a track.

C. **NOTICE.** Consultant and its subcontractor are not permitted to work on or near Metra trackage (or within 25 feet of Union Pacific & BNSF trackage) until the Metra employee- in- charge or the other appropriate railroad's employee is present at the job site and the extended job briefing has been conducted.

D. **EMERGENCY. CALL METRA POLICE (312) 322-2800**

16. **MISCELLANEOUS.**

A. **COMPLIANCE WITH LAWS.** Consultant hereby agrees to comply with all applicable statutes, ordinances, building codes, and regulations of the United States, the State of Illinois, Metra, and units of local government. Any contract executed in violation of the terms and conditions of law may be null and void as to Metra.

B. **GOVERNING LAWS.** To the extent not preempted by federal law, this Agreement is made in and shall be interpreted under the laws of the State of Illinois, and Consultant agrees and consents that only the courts of Cook County, State of Illinois, the United States District Court for the Northern District of Illinois, and 7th Circuit shall have jurisdiction over controversies arising out of this Agreement. The parties to this Agreement irrevocably consent to jurisdiction of such courts and waive any objection based on venue or forum nonconveniens.

C. **NOTICES.** All notices, demands, elections, and other instruments required or permitted to be given or made by either party upon the other under the terms of this Agreement or any

statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by certified or registered mail with proper postage prepaid, hand delivered, or sent by facsimile transmission, with proof of successful transmission sent by regular mail as either party may from time to time furnish to the other in writing. All notices to Metra shall be sent to the Director of Professional Services.

D. **HEADINGS.** The section headings of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

E. **SET-OFF RIGHTS.** Metra may, but shall not be obligated to, withhold from and set-off against any payment otherwise due and payable by Metra under this Agreement, any amount payable by Consultant to Metra under or in connection with this Agreement.

F. **SEVERABILITY.** If any provision of this Agreement, or any paragraph, sentence, clause, phrase, or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties.

G. **WAIVER.** No waiver of any right of a party under this Agreement shall be effective unless made in writing by the party whose rights are thereby waived, stating explicitly that a waiver of a right under this Agreement is intended, and executed by an officer who has authority generally to execute contracts for the waiving party.

H. **CONSTRUCTION.** Consultant is represented by legal counsel of its choice and is fully aware of the terms of this Agreement. Consultant agrees that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

I. **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F (or the most recent Circular), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Metra requests which would cause Metra to be in violation of the FTA terms and conditions.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES RECITED BELOW:

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION D/B/A METRA	**CONSULTANT**
BY_____	BY_____
_____ PRINT NAME	_____ PRINT NAME
TITLE EXECUTIVE DIRECTOR	TITLE
ATTEST	ATTEST
BY_____ DATE	BY_____ DATE
TITLE ASSISTANT SECRETARY TO THE BOARD	TITLE_____

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

CONTRACT CLAUSES

If applicable, FTA Circular 4220.1F Contract Clauses will apply to any purchase order/contract resulting from this Invitation for Bid or Request for Proposal. See the attached listing of the Applicability of Third Party Clauses for the respective type of procurement.

These Clauses in this Exhibit are a generalized guide to the FTA required Federal Clauses. In the event that the Contract sets forth more specific requirements, the Clause(s) in the Contract shall take precedence and control over the Clause(s) in this Exhibit.

For further information, visit the FTA website: http://www.fta.dot.gov.

APPLICABILITY OF THIRD PARTY CONTRACT CLAUSES

(excluding micro-purchases, except for construction contracts over $2,000)

PROVISION	Page No.	TYPE OF PROCUREMENT: Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	Pg. 4	Not Applicable	Not Applicable	Not Applicable	All	Not Applicable
False Statements or Claims Civil and Criminal Fraud	Pg. 4	Not Applicable	Not Applicable	Not Applicable	All	Not Applicable
Energy Conservation	Pg. 4	Not Applicable	Not Applicable	Not Applicable	All	Not Applicable
Clean Air	Pg. 5	Not Applicable	Not Applicable	Not Applicable	>$100,000	Not Applicable
Clean Water	Pg. 5	Not Applicable	Not Applicable	Not Applicable	>$100,000	Not Applicable
Civil Rights (Title VI, EEO, ADA except Special DOL, EEO Clause for construction projects)	Pg. 6	Not Applicable	Not Applicable	Not Applicable	All	Not Applicable
Disadvantaged Business Enterprises (DBEs)	Pg. 6	Not Applicable	Not Applicable	Not Applicable	All	Not Applicable
Access to Third Party Contract Records	Pg. 6	Not Applicable	Not Applicable	Not Applicable	All	Not Applicable
Changes to Federal Requirements	Pg. 9	All	All	All	All	Not Applicable
Termination	Pg. 9	Not Applicable	Not Applicable	Not Applicable	>$10,000 if 49 CFR part 18 applies.	Not Applicable
Patent Rights	Pg. 9	Not Applicable	Not Applicable	Not Applicable		Not Applicable
Rights in Data and Copyrights	Pg. 9	Not Applicable	Not Applicable	Not Applicable		Not Applicable
Contract Work Hours and Safety Standards Act	Pg.10	Not Applicable	Not Applicable	Not Applicable	>$100,000 (also ferries)	Not Applicable
Drug Misuse and Testing	Pg. 11	Not Applicable	Not Applicable	Not Applicable		Not Applicable
Alcohol Misuse and Testing	Pg. 11	Not Applicable	Not Applicable	Not Applicable		Not Applicable
Recycled Products	Pg. 11	Not Applicable	Not Applicable	Not Applicable	EPA – selected items $10,000 or more annually	Not Applicable
Resolution of Disputes, Breaches, or Other Litigation	Pg. 12	Not Applicable	Not Applicable	Not Applicable	>$100,000	Not Applicable

APPLICABILITY OF THIRD PARTY CONTRACT CLAUSES

(excluding micro-purchases, except for construction contracts over $2,000)

		TYPE OF PROCUREMENT				
PROVISION	**Page No.**	**Professional Services/A&E**	**Operations/ Management**	**Rolling Stock Purchase**	**Construction**	**Materials & Supplies**
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Disadvantaged Business Enterprises (DBEs)	Pg. 6	Not Applicable	Not Applicable	Not Applicable	All	Not Applicable
Access to Third Party Contract Records	Pg. 6	Not Applicable	Not Applicable	Not Applicable	All	Not Applicable
Changes to Federal Requirements	Pg. 9	All	All	All	All	Not Applicable
Termination	Pg. 9	Not Applicable	Not Applicable	Not Applicable	>$10,000 if 49 CFR part 18 applies.	Not Applicable
Patent Rights	Pg. 9	Not Applicable	Not Applicable	Not Applicable		Not Applicable
Rights in Data and Copyrights	Pg. 9	Not Applicable	Not Applicable	Not Applicable		Not Applicable
Contract Work Hours and Safety Standards Act	Pg.10	Not Applicable	Not Applicable	Not Applicable	>$100,000 (also ferries)	Not Applicable
Drug Misuse and Testing	Pg. 11	Not Applicable	Not Applicable	Not Applicable		Not Applicable
Alcohol Misuse and Testing	Pg. 11	Not Applicable	Not Applicable	Not Applicable		Not Applicable
Recycled Products	Pg. 11	Not Applicable	Not Applicable	Not Applicable	EPA – selected items $10,000 or more annually	Not Applicable
Resolution of Disputes, Breaches, or Other Litigation	Pg. 12	Not Applicable	Not Applicable	Not Applicable	>$100,000	Not Applicable

THIRD PARTY CONTRACTING GUIDANCE

APPICABILITY

No Government Obligations to Third Parties.

A. Contractor acknowledges and agrees 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 Customer, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

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

False or Fraudulent Statements or Claims.

The requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. part 3801 et seq and US DOT regulation 49 C.F.R. Part 31 apply to this Contract. Accordingly, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes 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, as amended, on the Contractor to the extent the federal government deems appropriate. If applicable, the federal government reserves the right to impose on the Contractor the penalties of 18 U.S.C. Part 1001 and 49 U.S.C. Part No. 5307 (n) (1), to the extent the federal government deems appropriate.

Energy Conservation.

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act (42 U.S.C., Section 6321 et seq.).

Environmental Requirements.

The Contractor recognizes that many federal and state laws imposing environmental and resource conservation requirements may apply to the project. Some, but not all, of the major federal laws that may affect the project include: the National Environmental Policy act of 1969, as amended, 42 U.S.C. § 4321 et seq; the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq; and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. The Contractor also recognizes that U.S. EPA, FHWA and other agencies of the federal government have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect the project. Thus, the Contractor

agrees to adhere to, and impose on its subcontractors and any other parties at any tier, any such federal requirements as the federal government may now or in the future promulgate that is applicable to this project. Listed below are requirements of particular concern to FTA, Metra and the Contractor. The Contractor acknowledges that this list does not constitute the Contractor's entire obligation to meet all federal environmental and resource conservation requirements.

a. **Environmental Protection.**

The Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et esq. in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

b. **Air Quality.**

The Contractor agrees as follows:

(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. Specifically:

(a) The Contractor agrees to comply with all applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Project Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, "40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans."40 C.F.R. Part 93. To support the requisite air quality conformity finding for the project, the Contractor agrees to implement each air quality mitigation and control measure incorporated in the project. The Contractor agrees that any project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure, will be wholly consistent with the description of the design concept and scope of the project described in the SIP.

(2) The Contractor agrees to comply with, and assures compliance by its subcontractors at any tier, with these requirements resulting from the project. The Contractor will report any violation by its own employees and subcontractors at any tier, that may result in any violation of these requirements to Metra, the FTA, and to the appropriate U.S. EPA Regional Office.

c. **Clean Water.**

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

2. The Contractor agrees to comply with, and assures compliance by its subcontractors at any tier, with these requirements resulting from the project. The Contractor will report any violation by

its own employees and subcontractors at any tier, that may result in any violation of these requirements to the FTA, Metra, and to the appropriate U.S. EPA Regional Office.

Audit.

Contractor shall permit the authorized representatives of either Metra, RTA, IDOT, U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of Contractor relating to its performance under the Contract.

Disadvantage Business Enterprise ("DBE").

A. Contractor must take all such action as may be necessary and reasonable to assure that disadvantaged business enterprises have an equitable opportunity to compete in all subcontracting activities and shall cooperate with Metra in its program for the participation of disadvantaged enterprises in Metra procurements.

B. U.S. Department of Transportation Regulations. Each Contractor shall agree to abide by the statements in subparagraphs (1) and (2) below.

Policy: It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of Contracts financed in whole or in part with federal funds under this Contract. Consequently, the DBE requirements of 49 CFR Part 26 applies to this Contract.

DBE Obligation: The Contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of Contracts and subcontracts finances in whole or in part with federal funds provided under this Contract. In this regard all Contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform Contracts. Contractors shall not discriminate on the basis of race, religion, color, sex, national origin, age, or disability in the award and performance of DOT-assigned Contracts.

Employment.

A. Equal Employment Opportunity and Fair Employment Practices. In connection with the execution and performance of this Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

B. FTA Regulations. Contractor for itself, its assignees and successors in interests, agrees that it will comply with the following regulation:

1. Compliance with Regulations. Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation

(hereinafter, "DOT") Title 49, Code of federal regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this Contract.

2. Nondiscrimination. Contractor, with regard to the work performed by it during this Contract, shall not discriminate on the grounds of race, religion, color, sex, national origin, age or disability in the selection and retention subcontractors, including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this Contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts (including Procurements of Materials and Equipment). In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under the Contract and the regulations relative to nondiscrimination on the grounds of race, religion, color, sex, national origin, age or disability.

4. Information and Reports. Contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by Metra or FTA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish said information, Contractor shall so certify to Metra or FTA, as appropriate, and shall set forth what efforts it has made to obtain said information.

5. Sanctions for Noncompliance. In the event Contractor's noncompliance with the nondiscrimination provisions of this Contract, Metra shall impose such Contract sanctions as it or FTA may determine to be appropriate including, but not limited to:

a. Withholding of payments to Contractor under this Contract until Contractor complies, and/or

b. Cancellation, termination or suspension of this Contract, in whole or in part.

6. Incorporation of Provisions. Contractor shall include these paragraphs (1) through (6) of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant hereto. Contractor shall take such action with respect to any subcontract or procurement as Metra or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction. Contractor may request Metra to enter into such litigation to protect the interest of Metra and in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

C. Equal Employment Opportunity - FEPC. Contractor shall comply with, and assure that each subcontractor complies with the following regulations of the Illinois Human Rights Commission, as amended:

1. In the event of the Contractor's noncompliance with any provision of this Equal Opportunity Clause, the Illinois Human rights Act or the Illinois Human Rights Commission's Rules and Regulations, the Contractor may be declared nonresponsible and therefore ineligible for future Contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the Contract may be canceled or avoided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by stature or regulation. During the performance of this Contract, the Contractor agrees as follows:

a. That it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, ancestry, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are under utilized and will take appropriate affirmative action to rectify any such under utilization.

b. That, if it hires additional employees in order to perform this Contract or any portion hereof, it will determine the availability (in accordance with the Commission's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

c. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, religion, color, sex, national origin, age, disability or ancestry, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

d. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Commission's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly so notify the Illinois Human Rights Commission and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

e. That it will submit reports as required by the Illinois Human Rights Commission's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Commission or the Contracting Agency,

and in all respects comply with the Illinois Human Rights Act and the Commission's Rules and Regulations.

f. That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Illinois Human Rights Act and the Commission's Rules and Regulations.

g. That it will include verbatim or by reference the provisions of paragraphs (a) through (g) of this clause in every performance subcontract as defined in Section 1.1 (17) (a) of the Commission's Rules and Regulations so that such provisions will be binding upon every such subcontractor; and that it will also include the provisions of paragraphs (a), (e), (f) and (g) in every supply subcontract as defined in Section 1.1 (17) (a) of the Commission's Rules and Regulations so that such provisions will be binding upon every such subcontractor. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by all its subcontractors and further it will promptly notify the contracting agency and the Illinois Human Rights Commission in the event any subcontractor fails or refuses to comply therewith. In addition, no Contractor will utilize any subcontractor declared by the Commission to be nonresponsible and therefore ineligible for Contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

2. Each Contractor and subcontractor shall in turn include the Equal Employmen Opportunity Clause set forth in Section 6.1 of these Rules and Regulations in each of its subcontracts verbatim or by reference so that provisions of Paragraphs (a) through (g) of said clause will be binding upon subcontractors of every tier, provided, however, that only paragraphs (a), (e), (f) and (g) need be included in every subcontract as defined in Section 1.1 (17) (a) of these Rules and Regulations.

Copyright and Rights in Data.

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information on Contracts. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual. The Agreement shall be subject to the FTA's policy on copyrights and rights in data with respect to reports and other technical materials developed with in conjunction with planning, research development or demonstration projects. That policy as set forth in the most current FTA Master Agreement available from the FTA website permits the author or grantee to copyright the work but FTA reserves a royalty-free nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for Government purposes.

Changing Requirements.

To achieve compliance with changing federal, state and local requirements, Contractor is to recognize that the requirements may change and the changed requirements will apply to this project as required, unless the federal, state and/or local government determines otherwise.

Patent Rights.

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information on Contracts. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual. The Agreement shall be subject to the FTA's policy on any invention, improvement, or discovery conceived or first actually reduced to practice in conjunction with planning, research development or demonstration projects as stated in the most current FTA Master Agreement available from the FTA website.

Contract Hours and Safety Standards Act.

The Contractor agrees to comply with and assures compliance by its sub-contractors at any tier, with applicable employee protection requirements for employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §327 through 332, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Contracts (also Labor Standard Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)", 29 C.F.R. Part 5.

This Act applies to construction Contracts and, in very limited circumstances, non-construction projects that employ laborers or mechanics on public work.

(1) Overtime requirements – No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages – In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages – Metra shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any other Federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for

unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts – The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The 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.

Drug and Alcohol Testing.

To the extent the Contractor, subcontractor, or any party contracted for work as a result of this Contract performs a safety sensitive function, it agrees to comply with, and assures its employees comply with the requirements of 49 U.S.C. Part 5331 and 49 C.F.R. Part 653 for Drug Abuse. To the extent the Contractor, subcontractor, or any party contracted for work as a result of this Contract performs a safety sensitive functions, it agrees to comply with, and assures its employees comply with the requirements of 49 U.S.C. Part 5331, 49 C.F.R. Part 654 for Alcohol Abuse.

Preference for Recycled Products.

If specified by Metra in the Invitation For Bid or Request For Proposal solitication, and to the extent practicable and economically feasible, Metra agrees to accept by competitive preference, products and services that conserve natural resources, protect the environment and that are energy efficient. Examples of such products may include, but are not limited to products described in the U.S. Environmental Protection Agency guidelines at 40 C.F.R. parts 247-253, which implement section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6962.

Termination.

Metra may terminate the Contract at any time hereafter, with or without cause, by giving written notice to the Contractor. Termination shall be effective upon receipt of such notice by the Contractor. If Metra terminates the Contract other than for breach thereof by the Contractor, Metra agrees to pay the Contractor, and the Contractor agrees to accept as its sole remedy, cancellation charges equal to the remaining unpaid costs accrued and obligated to date of cancellation. In the event of breach or violation by the Contractor of any provision of the Contract, Metra may allow the Contractor a reasonable opportunity to cure the breach prior to termination under this provision. Upon termination of this Contract for breach by the Contractor, the Contractor assumes liability for all excess costs incurred by Metra to complete the Scope of Services specified in the Contract.

Debarment and Suspension.

The contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transactions it enters into.

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

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

Resolution of Disputes, Breaches, or Other Litigation..

See the relative Disputes Section in the Contract Documents.

Cargo Preference – Use of United States Flag Vessels.

The Cargo Preference requirements apply to all Contracts greater than $3,000 which involving equipment, materials, or commodities which may be transported by ocean vessels. The Contractor agrees:

A. To utilize privately owned United States flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo lines, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.

B. To furnish within 20 days following the date of loading, for shipment 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 Pace (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration 400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project.

C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.

Fly America Requirements.

The Fly America requirements apply to all Contracts greater than $3,000 which include the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S. The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients (i.e. Metra) and sub-recipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary

to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Buy America.

The Buy America requirements apply to the following types of Contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $100,000). The Buy America requirements flow down from FTA recipients (i.e. Metra) and sub-recipients to first tier Contractors, who are responsible for ensuring that lower tier Contractors and subcontractors are in compliance. The $100,000 threshold applies only to the grantee's (Metra's) Contracts, subcontracts under that amount are subject to Buy America.

A. Pursuant to Section 165.a and 165.b of the Surface Transportation Assistance Act of 1982, the Contractor acknowledges that federal funds shall not be appropriated or utilized for any Contract awarded pursuant to this bid unless steel, cement and manufactured products used in such projects are produced in the United States; provided however, that the foregoing provision shall not apply where the Secretary of Transportation has made one of the following determinations:

   (1) That the application of the foregoing provision would be inconsistent with the public interest
   (2) That such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality
   (3) In the case of the procurement of bus and other rolling stock (including train control, communication, and traction power equipment), that (a) the cost of components which are produced in the United States is more than 60% of the vehicle or equipment described in this paragraph, and (b) final assembly of the vehicle or equipment described in this paragraph has taken place in the United States
   (4) That inclusion of domestic material will increase the cost of the overall project Contract by more than 25%

B. For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

C. Likewise, the Contractor agrees as a condition of responsiveness to and in order to induce the acceptance of the Bid Proposal, that it will submit with its Bid Proposal, a completed Buy America Certification.

Prevailing Wages.

Under 49 U.S.C. Section 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Common Grant Rules require contracts for construction, alteration, or repair at any contract tier exceeding $2,000 to include provisions requiring compliance with the Davis-Bacon Act, 40 U.S.C. Sections 3141 *et seq.*, and implementing DOL regulations "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction," 29 CFR Part 5. The Davis-Bacon Act requires that contractors pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires

contractors to pay wages not less than once a week. Metra must include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and must condition contract award upon the acceptance of that wage determination. These requirements are in addition to the separate Wage and Hour Requirements addressed in paragraph 2.c(1) of this Chapter IV.

Anti-Kickback.

Section 1 of the Copeland "Anti-Kickback" Act, at 18 U.S.C. Section 874, prohibits anyone from inducing, by any means, any person employed on construction, prosecution, completion, or repair of a federally assisted building or work, to give up any part of his or her compensation to which he or she is otherwise entitled. Section 2 of that Act, at 40 U.S.C. Section 3145, as amended, and implementing DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 CFR Part 3, impose record keeping requirement on all contracts for construction, alteration, or repair exceeding $2,000. The Common Grant Rules also require provisions for compliance with the Copeland "Anti-Kickback" Act, as amended, and implementing DOL regulations.

Bonding.

Bonds are required for all construction contracts exceeding the simplified acquisition threshold (*see*, Chapter II, Subsection 3.b) unless FTA determines that other arrangements adequately protect the Federal interest.

Protection for Public Transportation Employees.

When public transportation services are acquired from a contractor, the terms of Metra's DOL certification of public transportation employee protective arrangements will apply to work under the contract provided by those employees covered by the certification. That certification is required by 49 U.S.C. Section 5333(b) (often referred to as "13(c)") and implementing DOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215. Consequently, the contractor must comply with the terms of that DOL certification.

The Fair Labor Standards Act, 29 U.S.C. Sections 201 *et seq.*, also applies to public transportation employees performing work involving commerce.

Accessibility.

A contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 *et seq.*; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)" using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. Metra advises its contractors operating public transportation services to review the requirements for public entities in this context.

Charter Service Restrictions.

A contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support any charter service operations except as permitted by 49 U.S.C. Section 5323(d) and FTA regulations, "Charter Service," 49 CFR Part 604.

School Bus Restrictions.

A contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support exclusive school bus operations except as permitted by 49 U.S.C. Sections 5323(f) or (g) and FTA regulations, "School Bus Operations," 49 CFR Part 605, to the extent consistent with 49 U.S.C. Sections 5323(f) or (g).

Seismic Safety.

Seismic safety provisions must be included in its contracts for the construction of new buildings or additions to existing buildings as required by 42 U.S.C. Sections 7701 *et seq.*, and DOT regulations, "Seismic Safety," 49 CFR Part 41 at Sections 41.117 and 41.120, implementing the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. Sections 7701 *et seq.*

Special Notification Requirements for States.

Not applicable because Metra is not a State recipient.

Intelligent Transportation Systems.

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

Lobbying Certification and Disclosure.

If the contract will exceed $100,000, Metra must obtain a lobbying certification before awarding the contract, and if applicable, a lobbying disclosure from a prospective contractor. *See*, DOT regulations, "New Restrictions on Lobbying" 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352, which implement the Byrd "Anti-Lobbying" Amendment, 31 U.S.C. Section 1352.

Incorporation of FTA Terms.

The provisions in this section includes, in part, certain standard terms and conditions required by USDOT/FTA, whether of not expressly set forth in these provisions. All contractual provisions required by USDOT/FTA, as set forth in FTA Circular 4220.1F, or the most recent Circular, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all USDOT/FTA 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 Metra requests, which would cause Metra to be in violation of the USDOT/FT/ terms and conditions.

EXHIBIT 1H

U.S. Department
of Transportation
**Federal Transit
Administration**

REGION V
Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 320
Chicago, IL 60606-5253
312-353-2789
312-886-0351 (fax)

July 21, 2011

Mr. Alex Clifford
Executive Director
Metra
547 West Jackson, Suite 1100
Chicago, IL 60661

Re: Procurement System Review
Final Report

Dear Mr. Clifford:

Thank you for assisting the Federal Transit Administration's (FTA) Procurement System Review (PSR) contractor, Calyptus Consulting Group, in performing their review of the Northeast Illinois Regional Commuter Railroad Corporation (Metra). The purpose of this review was to assess whether Metra's procurement policies and procedures are in compliance with applicable federal standards and principles. The review covered 67 FTA funded procurements.

The Calyptus Consulting Group performed interviews of key personnel and reviews of selected contract and purchase order files. The review found Metra deficient in 24 procurement elements. Enclosed is a copy of the final report. Please review Section V which includes the "Reviewing Contractor Comments". This section states whether Metra's responses to the corrective action plan were acceptable. Please closely review this section and provide a response based on the timeframes identified. If you are unable to meet a deadline, please submit a written request for an extension.

Please note that several findings relate to the following contracts: Terry's Ford, LTK Engineering Services, Nippon Sharyo, and Engineering and Management Specialist, Inc. FTA will conduct a separate assessment of these contracts to determine their eligibility for federal funding. You will receive more details regarding this action under a separate letter.

We greatly appreciate your continued commitment to making public transportation America's mode of choice. Thank you for your personal contribution, cooperation and assistance during this PSR since we realize that the review has involved effort, time, and planning.

If you have any questions regarding this report or the PSR process, please contact Lisa Joiner or me at 312-353-2789.

Sincerely

Dominick J. Gatto, PE
Director, Office of Program Management and Oversight

Enclosure

cc: David Simmons

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FEDERAL TRANSIT ADMINISTRATION

Metra

The way to really fly

FINAL REPORT: NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION (METRA), CHICAGO, IL

PROCUREMENT SYSTEM REVIEW

SITE VISIT: JANUARY 24-27, 2011

FINAL REPORT DATE: JULY 1, 2011

CALYPTUS
Consulting Group, Inc.

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I. EXECUTIVE SUMMARY

Background

The Federal Transit Administration (FTA) contracted with Calyptus Consulting Group, Inc. (the 'reviewing contractor') to review the procurement system used by the Northeast Illinois Regional Commuter Railroad Corporation (Metra) in the expenditure of grant funds.

Metra's last procurement system review was in 2007; as a Top Thirty grantee, Metra is subject to a review every three years. Metra was selected for a PSR for this reason.

The procurement system review process, as indicated on the FTA's Web site, uses a standardized approach, interview guides, checklists, and reporting framework. This process was applied in its entirety without change for the review of the Metra.

Briefing and Opening Meeting

The reviewing contractor held a teleconference with the members of the FTA oversight team in the Region V office on January 6, 2011 to understand the background for the Procurement System Review (PSR) and to review recent audit reports, any past assessments, and information on the current projects. Several key procurements were identified and added to the contract sample.

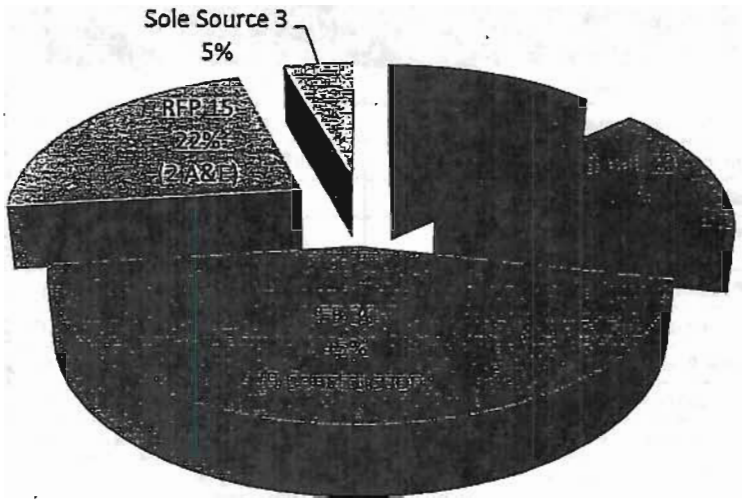
On January 24, 2011, an opening conference was held to explain the process to be used during the review. A list of the individuals attending the opening conference can be found on pages 13 and 14 of this report.

Copies of policies and procedures, organization charts (See Appendix C) and lists of eligible contracts were received prior to the opening conference. Interviews with staff were conducted, including the Executive Director, Chief Financial Officer, Chief Engineering Officer, Deputy Director for Corporate Affairs and Legal, DBE Program Director, Capital Grants Manager Head of Procurement, and Head of Internal Audit. The focus of interviews and discussions included the review of:

- Protest Procedures
- Policies and Procedures
- Standards of Conduct
- Contract Administration
- Efficient and Economic Purchases
- Organization and Personnel
- Status of Purchasing

Procurements Reviewed

Sixty-Seven (67) procurements were selected for review against the requirements of Circular 4220.1F, as indicated by procurement method below:



File Review and Closing Meeting

The file review was completed on January 27, 2011 and the Exit Conference was held on that day to formally present the findings of the review to FTA Regional staff and Metra management.

Results of the Procurement System Review

Metra demonstrated its compliance in a number of key areas required by the Master Agreement and FTA Circular 4220.1F. The grantee was found not deficient in twenty-nine (29) of the elements. Six (6) elements were not applicable or not observed. The grantee was found deficient in twenty-five (25) of the elements. The reviewing contractor also made seventeen (17) suggestions to improve the Metra procurement system.

The overall findings are summarized as follows:

Areas Not Deficient	30
Areas Deficient	24
Areas Not Applicable or Observed	6
Suggestions for Improving the Procurement System	17

Summary of PSR Findings by Element

The summary below illustrates the findings by element, and the proposed corrective action timeframes from the date of the final report:

No.	Element	Basic Requirement 42264F	ND	D	NA	Corrective Action Timeframe
1	Written Standards of Conduct	III, 1.a.b.c.	3			
2	Contract Administration System	III, 3.		3		90 Days
3	Written Protest Procedures	VII, 1. a. b.	3			
4	Pre-Qualification System	VI, 1.c.			3	
5	System for Ensuring Most Efficient & Economic Purchase	IV, 1. b. c. e.		3		90 Days
6	Procurement Policies & Procedures	III, 3.a.		3		90 Days
7	Independent Cost Estimates	VI, 6.	45	10		30 Days
8	A&E Geographic Preferences	VI, 2. a. (4) (g)	2	0		
9	Unreasonable Qualification Requirements	VI, 2. a. (4) (a)	51	0		
10	Unnecessary Experience and Excessive Bond	VI, 2. a. (4) (b) (e)	44	0	0	
11	Organizational Conflict of Interest	VI, 2. a. (4) (h)	0	0	44	
12	Arbitrary Action	VI, 2. a. (4) (j)	50	5		30 Days
13	Brand Name Restrictions	VI, 2. a. (3)	1	7	43	30 Days
14	Geographic Preferences	VI, 2. a. (4)	54	0		
15	Contract Period of Performance Limitations	IV, 2.a.(10)	9	1	45	30 Days
16	Written Procurement Selection Procedures	III, 3. a.; VI, 2. e.	32	9		30 Days
17	Solicitation Prequalification Criteria	VI, 1.c.(1)(2)(3)	0	0	41	
18	Award to Responsible Contractors	VI, 8. b.	17	27		30 Days
19	Sound and Complete Agreement	III, 3. b.; III, 3.b.	42	2		30 Days
20	No Splitting [Micro-purchases]	VI, 3. a.	9	0	0	
21	Fair and Reasonable Price Determination	VI, 3. a.	9	0	0	
22	Micro-Purchase Davis Bacon	VI, 3. a.	0	0	9	
23	Price Quotations [Small Purchases]	VI, 3. b.	10	0		
24	Complete Specifications	VI, 2. a.; VI, 3. c.	47	7		30 Days
25	Adequate Competition - Two or Responsible Bidders	VI, 3. c. (b)	38	3		30 Days
26	Firm Fixed Price [Sealed Bid]	VI, 3. c. (1) (c)	29	0		
27	Selection on Price [Sealed Bid]	VI, 3. c. (1) (d)	29	0		
28	Discussion Unnecessary [Sealed Bid]	VI, 3. c. (1) (e)	29	0		
29	Advertise/Publicized	VI, 3. c. (2) (a)	41	0		
30	Adequate Solicitation	VI, 3. c. (2) (b)	41	0		
31	Sufficient Bid Time [Sealed Bid]	VI, 3.c.(2)(d)	29	0		
32	Bid Opening [Sealed Bid]	VI, 3.c.(2)(e)	29	0		
33	Responsiveness [Sealed Bid]	VI, 3.c.(2)(f)	29	0		
34	Lowest Bid [Sealed Bid]	VI, 3.c.(2)(f)	0	0	29	
35	Rejecting Bids [Sealed Bid]	VI, 3.c.(2)(g)	5	0	24	
36	Evaluation [RFP]	3. d. (2) (d)	9	3		30 Days
37	Price and Other Factors [RFP]	3. d. (2) (e)	8	4		30 Days

No.	Element	Basic Requirement 4220.1F	ND	D	NA	Corrective Action Timeframe
38	Sole Source if Other Award is Infeasible	VI, 3. h.	3	0		
39	Cost Analysis Required [Sole Source]	VI, 6. a.	0	3		30 Days
40	Evaluation of Options	VI, 7. b.	1	0	43	
41	Cost or Price Analysis	VI, 6.	6	47		30 Days
42	Written Record of Procurement History	III, 3. d	40	14		30 Days
43	Exercise of Options	V, 7. d. (1) (a) (b)	1	0	43	
44	Out of Scope Changes	VI, 3. h. (3) (c)	0	3	42	30 Days
45	Advance Payments	IV, 2. b. (4) (b) 1, 2	44	0		
46	Progress Payments	IV, 2.b.(5)(c)	10	9	25	30 Days
47	Time and Materials Contracts	VI, 2.c.(2)(b)	3	0	41	
48	Cost Plus Percentage of Cost	VI, 2.c.(2)(a)	41	3		30 Days
49	Liquidated Damages Provisions	IV, 2.b.(6)(b) 1)	11	0	33	
50	Piggybacking	V, 7. a. (2)	0	0	3	
51	Qualifications Exclude Price [A&E]	VI, 3.f.(3)	2	0		
52	Serial Price Negotiations [A&E]	VI, 3.f.(3)	1	1		30 Days
53	Bid Security [Construction over $100,000]	IV, 2.h.(1)(a)]	8	0	0	
54	Performance Security [Const. over $100,000]	IV, 2.h.(1)(b)	8	0	0	
55	Payment Security [Construction over $100,000]	IV, 2.h.(1)(c)	8	0	0	
56	Clauses	IV, 2.	30	23		30 Days
57	Pre-Award Review - Rail	49 C.F.R. 663	1	0	0	
58	Post-Award Review - Rail	49 C.F.R. 663	1	0	0	
59	Pre-Award Review - Bus	49 C.F.R. 663	0	1	0	30 Days
60	Post-Award Review - Bus	49 C.F.R. 663	0	1	0	30 Days

Legend:

ND = Not Deficient

D = Deficient

N/A = Not applicable or not observed

II. DESCRIPTION OF THE GRANTEE

History

In 1974, the Regional Transportation Authority (RTA) was created by the Illinois General Assembly to coordinate and assist public transportation throughout the six-county metropolitan region and to serve as a conduit for the state and federal subsidies needed to keep the system operational. Due to ongoing financial pressures, the RTA was subsequently reorganized by the Legislature, in 1983, to provide for a service-board approach to the day-to-day operation of bus, rapid transit and commuter rail services system-wide. Under these changes to the RTA Act, the Commuter Rail Service Board emerged as the agency overseeing all commuter rail operations in the six-county area and was charged with a broad range of responsibilities with respect to fare and service levels, budgeting, capital programming, long-range planning and strategic service expansion. The Commuter Rail Service Board introduced the "Metra" name in 1984 as the service mark for the commuter system.

Metra directly operates seven of its lines and contracts with two freight carriers to run four others. Metra's contracted services include the Burlington Northern Santa Fe line to Aurora, as well as the three Union Pacific lines: the UP North Line to Kenosha, Wisconsin; the UP Northwest Line to Harvard, with branch line service to McHenry; and the UP West Line to Elburn that was extended from its former terminus at Geneva in 2006. In the case of Metra's direct operations, the services are actually provided through Metra's operating arm, the Northeast Illinois Regional Commuter Railroad Corporation, or NIRC.

FTA Funding and ARRA Projects

Metra has 52 open FTA grants in the amount of $2,199,807,879. Metra received two ARRA grants in 2009. The two grants total $141 million and fund 14 projects, as well as maintenance expenses. The ARRA funded projects as of November 30, 2010 are noted below:

1. Union Pacific Northern Line Bridge Reconstruction
2. Burlington Northern Santa Fe (BSNF) Fiber-Optics and Road Crossings
3. Bridge Rehabilitation – 59th and 60th
4. Bridge Rehabilitation – 75th and 79th
5. Bridge Rehabilitation – 73rd and 76th
6. 35th Street Station
7. Remanufacture of 40 Locomotives
8. Budd Car Alternating Current Conversion
9. Winnetka Station Restoration, Platforms, Shelter, and Elevators
10. Joliet Platforms
11. Lockport Platforms
12. Golf Station Platforms
13. Elburn Station Platforms
14. Pingree Road Station Parking

All operating funds from ARRA grants were used to fund force account work for preventive maintenance. 100% of these funds were expended as of December 31, 2010.

Source of Funds

The source of capital funds for 2010 is shown in the table below:

Source of Funds	Percent of Total Funds
Local	3%
State	9%
Federal Assistance	40%
Other Funds (state bonds)	48%

Procurement System

The Materials Management group is responsible for all procurement activities at Metra. The group is divided into three divisions; procurement, professional services, and materials. The Senior Director for Materials Management oversees the group and reports to the Senior Division Director for General Administration (see Appendix C for an organizational chart). The entire group consists of 18 staff members; several hold the Certified Purchasing Manager (C.P.M.) designation from the Institute for Supply Management (ISM). Staff experience ranges from three (3) to fifteen (15) years.

The thresholds and approval levels for various methods of procurement are noted in the table below:

Threshold	*Method of Procurement*	*Approval Level*
Up to $500	Micro Purchase / no quotes required	Department Heads
$500 - $10,000	Small Purchase / 3 quotes required	Department Heads
Over $10,000	Competitive Process – IFB or RFP	Executive Director

The Board of Directors approves RFPs over $10,000 and final decisions made using the RFP method of procurement.

The end user department is responsible for preparing the purchase requisition with the specification attached. End users report that they also prepare the solicitation documents in collaboration with Materials Management. Once the purchase order or contract is put in place, the end user department is also responsible for contract administration.

The annual procurement activity for 2010 as reported in the December 2010 monthly report is summarized in the following table:

Activity	Number of Actions 2010 Year to Date
Repair and Return PO	637
Credit Card Purchase	399
Contracts/Purchase Orders Issued under 10K	751
Contracts/Purchase Orders Issued over 10K	136
Single Bid/Formal PO/Price Analysis/Canvass	22
Single Bid/Informal PO/Price Analysis	35
Sole Source/Formal PO/Price Analysis	35
Sole Source/Informal PO/Price Analysis	40
Amendments/Informal & Formal Change of Name Agreements	52
Change Orders – Formal	50
Master Purchase Agreements	4
Release Off Master Purchase Agreement/Formal	26
Release Off of State of Illinois OR GSA	5
Re-bids (Formal)	17
Pre-Bid Conference	4
Addendums	18
Bid Extensions	13
Vendor Maintenance	106
Requisitions Received	1894
Increasing Pricing on BPO with Proper Documentation	14
Breach/Default Letter	1
Negotiating Terms & Conditions	4

DBE Program

The DBE program is included as part of the overall procurement process at Metra. The initial purchase requisition is sent to the DBE office along with the associated DBE goal. Goals are set based on the type of work envisioned and the availability of DBE firms. In cases where no goal is set, the DBE office may still notify potential DBE firms about the solicitation. In addition, Metra will not issue a notice to proceed until the prime contractor has submitted copies of all contracts in place with DBE subcontractors.

The current goal for Metra is 21% based on the last disparity study. A new study is scheduled for 2012 and the goal will be changed at that time. The current minimum project goal is 10% with most goals falling in the 15-25% range. The majority of contracts with goals are for construction and professional services. Sole source procurements and rolling stock procurements do not have goals associated with them. Metra maintains a database of all UCP certified DBE firms on their website. A separate directory is updated and printed monthly including all the firms Metra has certified.

III. SCOPE AND METHODOLOGY

Metra was chosen for a procurement system review primarily because they are a top thirty (30) grantee and their last review was in 2007. For this reason, the FTA wanted to assess the extent of compliance of the current Metra procurement system with Federal requirements. The reviewing contractor was asked to assess the overall procurement system and contract files at Metra regarding compliance with FTA Circular 4220.1F and the Master Agreement. The purpose of the Procurement System Review (PSR) was to evaluate the following:

- Policies and Procedures
- Procurement File Documentation
- Protest Procedures
- Standards of Conduct
- Contract Administration
- Efficient and Economic Purchases
- Buy America Compliance

The following representatives of Metra, FTA, and Calyptus Consulting attended the Entrance Conference held on January 24, 2011.

Reviewing Contractor and FTA:

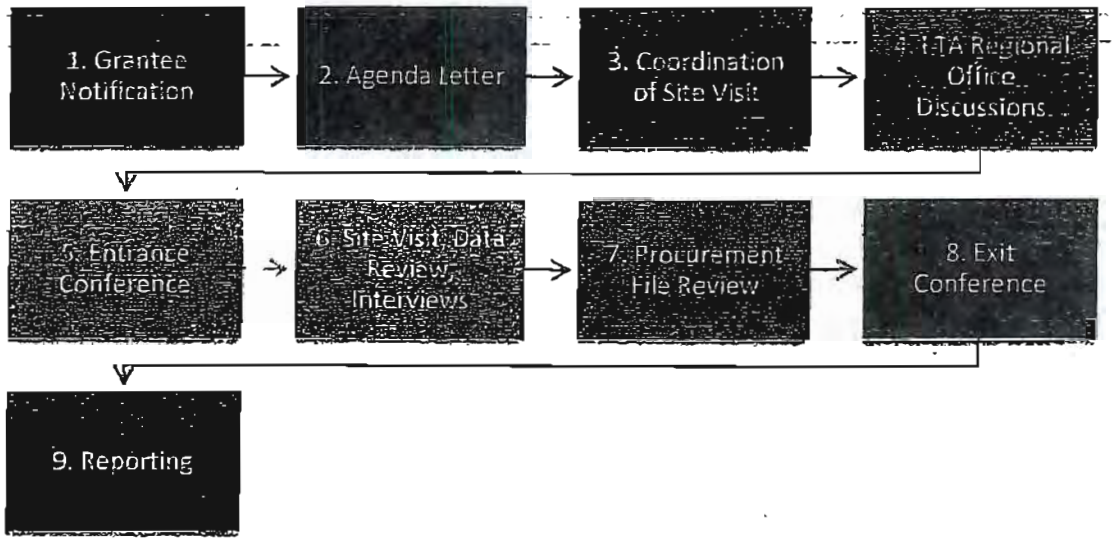
Name	*Position/Title*	*Contact Info*
George Harris	President, Calyptus Consulting Group	617-577-0041
Julie Robinowitz	Consultant, Calyptus Consulting Group	617-577-0041
Allison Gianneschi	Analyst, Calyptus Consulting Group	617-577-0041
Melody L. Hopson	FTA Region V	312-886-1611
Deborah Tilley	PMOC for FTA	215-316-8759

Grantee:

Name	*Position/Title*	*Contact Info*
Lynnette Ciavanella	Assistant Senior Division Director Capital and Strategic Planning	312-322-8022
Fred Smalarz	Senior Director Materials Management	312-322-6664
Carlos Gamboa	Department Head Professional Services	312-322-6668
David Simmons	Department Head Capital Grants	312-322-6626
Bill Tupper	Acting Executive Director	312-322-6934
Joe Lorenzini	Chief Engineer	312-322-6922
Paul A. Kisielius	Senior Division Director General Administration	312-322-6666
Terry Barnett	Acting General Counsel	312-322-6694
Eric Fernandes	Director Audit	312-322-6711
Tom Less	Chief Financial Officer	312-322-6428
Janice R. Thomas	DBE Director	312-322-6799

The purpose of the entrance conference was to provide information on the sequence of activities for the review, as noted in the following flowchart:

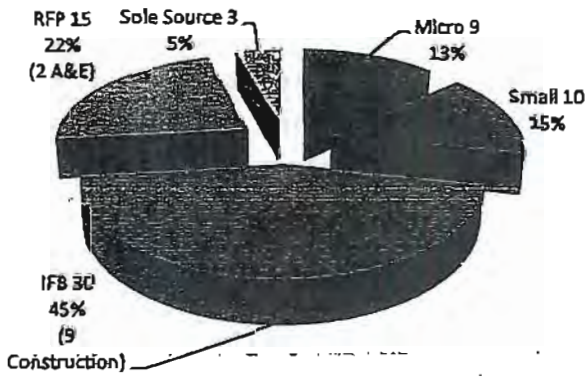
FTA Procurement System Review Process



Using the questionnaires from the FTA's PSR guide, individual interviews were conducted with executive management, finance, procurement, engineering, legal counsel, DBE program, and internal audit. In addition, information such as organization charts and policies and procedures were collected. The interviews and documentation were used to establish the framework for the file review.

Based on the data received and the assessment of the grantee's written policies and procedures, the reviewing contractor evaluated the number and types of contracts likely to be examined. Sixty-seven (67) procurements were selected for review, as indicated by procurement method below:

Procurement Type	Number of Files Reviewed
Micro	9
Small	10
IFB 9 Construction	30
RFP 2 A&E	15
Sole Source	3



During the review, the grantee was given the opportunity to provide additional documents for clarification of questions about the contract files. At the conclusion of the procurement system review, the grantee was briefed on the results and was offered the

opportunity to submit any documents for review that might clarify or eliminate areas marked deficient within the following 2 to 4 weeks before the draft final report was released. FTA Region V staff were also briefed prior to the exit conference. An exit conference was held on January 27, 2011 to brief Metra and FTA on the results of the procurement system review. The following individuals attended the exit conference:

Reviewing Contractor and FTA:

Name	*Position/Title*	*Contact Info*
George Harris	President, Calyptus Consulting Group	617-577-0041
Julie Robinowitz	Consultant, Calyptus Consulting Group	617-577-0041
Allison Gianneschi	Analyst, Calyptus Consulting Group	617-577-0041
Deborah Tilley	PMOC for FTA	215-316-8759

Grantee:

Name	*Position/Title*	*Contact Info*
Lynnette Ciavanella	Assistant Senior Division Director Capital and Strategic Planning	312-322-8022
Fred Smalarz	Senior Director Materials Management	312-322-6664
Carlos Gamboa	Department Head Professional Services	312-322-6668
David Simmons	Department Head Capital Grants	312-322-6626
Bill Tupper	Acting Executive Director	312-322-6934
Joe Lorenzini	Chief Engineer	312-322-6922
Paul A. Kisielius	Senior Division Director General Administration	312-322-6666
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Eric Fernandes	Director Audit	312-322-6711
Tom Less	Chief Financial Officer	312-322-6428
Janice R. Thomas	DBE Director	312-322-6799

The overall findings from the review are summarized as follows:

Areas Not Deficient	30
Areas Deficient	24
Areas Not Applicable or Observed	6
Suggestions for Improving the Procurement System	17

The requirements and the detailed information comprising these findings make up the balance of the report. The following sections will cover areas not deficient with FTA and Federal Requirements, findings of deficiency with FTA and Federal Requirements, and suggestions for

improving Metra's procurement system. Metra must provide FTA the status of all corrective actions associated with deficiencies every quarter until the deficient findings have been closed. Metra provided comments and corrective actions pertaining to the twenty-four (24) deficient elements by letter dated March 29, 2011. Portions of the corrective actions included in this letter were included in the appropriate areas of Section V of the report. A full copy of the letter and corrective action matrix is included in Appendix M of the report.

IV. AREAS NOT DEFICIENT OR NOT APPLICABLE WITH FTA AND FEDERAL REQUIREMENTS

1. Written Standards of Conduct

Basic Requirement: Chapter III, Section 1 a. b. c. of FTA Circular 4220.1F requires that grantees maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. The code should apply to all employees involved in the award and administration of contracts. The requirement reads: "No employee, officer, agent, immediate family member or board member of the grantee shall participate in the selection award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved." The section also addresses potential conflicts, solicitation and acceptance of gifts, penalties and sanctions.

Discussion: Metra's Administrative Procedures contain provisions for Standards of Conduct, including Conflict of Interest, Gifts/Gratuities and Relations. Interviews with Metra staff and a review of available audit findings indicated no issues with adherence to standards of conduct.

3. Written Protest Procedures

Basic Requirement: Chapter VII, Section 1. a. b. of FTA C 4220.1F requires that grantees have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding protests to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.

Discussion: Metra's procedures contain written protest procedures that are in compliance with FTA requirements. The interview with the Metra procurement staff revealed that there are no current protests in process, although there have been protests over the past two years that have all been resolved.

4. Pre-Qualification System

Basic Requirement: Chapter VI, Section 1. c. of FTA C 4220.1F states that grantees may prequalify people, firms, or products for participation in procurements provided that:

- Lists used in acquiring property and services are current;
- Lists include enough qualified sources to ensure maximum full and open competition;
- The recipient permits potential bidders or proposer to qualify during the solicitation period (from the issuance of the solicitation to its closing date), as set forth in the Common Grant Rule for governmental recipients. Evaluations for prequalification, however, need not be accelerated or truncated. FTA does not require a recipient to hold a particular solicitation open to accommodate a potential bidder or proposer that submits a person, firm, or product for approval before or during that solicitation.

Discussion: Metra does not utilize a pre-qualification system.

8. A & E Geographic Preferences

Basic Requirement: Chapter VI, Section 2.a (4)(g) of FTA Circular 4220.1F states that geographic location may be a selection criterion for 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."

Discussion: The two (2) procurements reviewed indicated no evidence of geographic preferences in the A&E procurements examined.

9. Unreasonable Qualification Requirements

Basic Requirement: Chapter VI, Section 2.a (4)(a) of FTA C 4220.1F indicates that unreasonable requirements placed on firms in order for them to qualify to do business are considered to be restrictive of competition.

Discussion: Of the fifty-one (51) procurements reviewed for this requirement, none were found to be deficient.

10. Unnecessary Experience and Excessive Bonding

Basic Requirement: Chapter VI, Section 2.a (4) (e) of FTA C 4220.1F states that unnecessary experience and excessive bonding requirements are considered to be restrictive of competition.

Discussion: Of the forty-four (44) procurements reviewed for this requirement, none were found to be deficient.

11. Organizational Conflict of Interest

Basic Requirement: Chapter VI, Section 2.a. (4)(h) of FTA C 4220.1F states that an organizational conflict of interest is considered to be restrictive of competition. An organizational conflict of interest exists if:

- because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice;
- a contractor's objectivity in performing the contract work is or might be otherwise impaired; or
- a contractor has an unfair competitive advantage.

Discussion: Of the forty-four (44) procurements examined for this requirement, all forty-four (44) were found to be not applicable as there was no evidence of apparent or potential Organizational Conflict of Interest in the procurement process.

14. Geographic Preferences

Basic Requirement: Chapter VI, Section 2.a (4)(g) of FTA C 4220.1F requires that grantees conduct procurements in a manner that prohibits the use of statutorily or administratively imposed 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.

Discussion: The review indicated no evidence of geographic preferences in the fifty-four (54) procurements examined.

17. Solicitation Pre-Qualification Criteria

Basic Requirement: Chapter VI, Section 1.c (1)(2)(3) of FTA C 4220.1F requires that:

- Lists of prequalified persons, firms, or products that are used in acquiring goods and services must be current and include enough qualified sources to ensure maximum full and open competition.
- The process shall not preclude potential bidders from qualifying during the solicitation period.

Discussion: Of the forty-one (41) procurements reviewed for this requirement, none were found to be applicable. Metra does not prequalify bidders or offerors as part of its solicitation process.

20. No Splitting [Micro-Purchases]

Basic Requirement: Chapter VI, Section 3.a. (2) (b) of FTA C 4220.1F indicates that micro-purchases are those purchases under $3,000. Micro-purchases requirements follow these guidelines:

- May be made without obtaining competitive quotations.
- There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition.
- Document that the price is fair and reasonable and how this determination was derived.

This requirement ensures that a large dollar requirement is not divided into smaller segments for the sole purpose of avoiding the requirements for competition.

Discussion: Of the nine (9) procurements reviewed for this requirement, none were found to be deficient.

21. Fair and Reasonable Price Determination [Micro-Purchases]

Basic Requirement: Chapter VI, Section 3.a (2) (c) of FTA C 4220.1F indicates that micro-purchases are those purchases under $3,000. Micro-purchases requirements follow these guidelines:

- May be made without obtaining competitive quotations.
- There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition.
- Document that the price is fair and reasonable and how this determination was derived.

Discussion: Of the nine (9) procurements reviewed for this requirement, none were found to be deficient.

22. Micro-Purchase Davis Bacon

Basic Requirement: Chapter VI, Section 3.a (1) of FTA C 4220.1F indicates that Davis-Bacon prevailing wage and hour restrictions apply to construction contracts exceeding $2,000.

Discussion: Of the nine (9) procurements reviewed for this requirement, none were for construction; therefore, this requirement was not observed.

23. Price Quotations [Small Purchases]

Basic Requirement: Chapter VI, Section 3.b. (2) of FTA C 4220.1F defines small purchase procedures as those relatively simple and informal procurement methods for securing services, supplies, or other property that cost more than $3,000, but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently set at $100,000). It also indicates that price or rate quotations shall be obtained from an adequate number of qualified sources.

Discussion: Of the ten (10) procurements reviewed for this requirement, none were found to be deficient.

26. Firm Fixed Price [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c (1) (c) of FTA C 4220.1F indicates that the procurement must lend itself to a firm fixed price contract and that the selection of the successful bidder can be made principally on the basis of price.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, none were found to be deficient.

27. Selection on Price [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c (1) (c) of FTA C 4220.1F indicates that the procurement must lend itself to a firm fixed price contract and that the selection of the successful bidder can be made principally on the basis of price.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, none were found to be deficient.

28. Discussion Unnecessary [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c (1) (e) of FTA C 4220.1F indicates that no discussion with bidders is needed.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, none were found to be deficient.

29. Advertised/Publicized

Basic Requirement: Chapter VI, Section 3.c. (2) (a) of FTA C 4220.1F requires that the invitation for bids be publicly advertised and that bids be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids.

Discussion: Forty-one (41) procurements were reviewed for this requirement and none were found to be deficient. Metra documents the advertisement of all solicitations and amendments in the procurement file.

30. Adequate Number of Sources Solicited

Basic Requirement: Chapter VI, Section 3.c (2) (b) of FTA C 4220.1F requires that:

- Proposals are solicited from an adequate number of qualified sources.
- Requests for proposals are publicized.

Discussion: Of the forty-one (41) procurements reviewed for this requirement, none were found deficient.

31. Sufficient Bid Time [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c. (2)(d) of FTA C 4220.1F requires that the invitation for bids are publicly advertised and bids are solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, none were found to be deficient.

32. Bid Opening [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c (2) (e) of FTA C 4220.1F requires that all bids be publicly opened at the time and place prescribed in the invitation for bids.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, none were found to be deficient.

33. Responsiveness [Sealed Bid]

Basic Requirement:

Chapter VI, Section 3.c (2)(f) of FTA C 4220.1F indicates that a firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, none were found to be deficient.

34. Lowest Bid [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c. (2) (f) of FTA C 4220.1F indicates that a firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Bidding documents must specify the factors, such as discounts, transportation costs, and life cycle costs that will be considered in determining which bid was lowest. The grantee is thus obliged to review lowest total cost when awarding on low price, if the aspects of this type of evaluation were specified in the solicitation.

Discussion: Twenty-nine (29) procurements were reviewed for this requirement and they were all found to be not applicable as no other financial factors besides price were specified in the solicitation.

35. Rejecting Bids [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c. (2) (g) of FTA C 4220.1F indicates that any or all bids may be rejected if there is a sound documented business reason. Reasons for possible bid rejection include lack of responsiveness to the solicitation and lack of responsibility of the offeror.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement all were found to be not applicable. In five (5) procurements, Metra rejected at least one bid and the reason for the rejection was based on a sound business reason and documented in the procurement file.

38. Sole Source If Other Award Is Inadequate

Basic Requirement: Procurements by non-competitive proposal are allowed under Chapter VI, Section 3.i(1)(b) of FTA C 4220.1F only when the contract award is inadequate under other procurement methods and at least one of the five conditions outlined below exists:

1. Item or service is only available from a single source;
2. Public exigency or emergency for the requirement will permit a delay from competitive bidding;
3. FTA authorizes non-competitive negotiations;
4. Competition is deemed inadequate; or
5. An emergency for the requirement did not permit a delay resulting from a competitive solicitation.

Discussion: Of the three (3) procurements reviewed for this requirement, none were found to be deficient.

40. Evaluation of Options

Basic Requirement: Chapter VI, Section 7.b. of FTA C 4220.1F requires that the option quantities or periods contained in the contractor's bid or offer are evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

Discussion: Forty-four (44) procurements were reviewed for this requirement. Forty-three (43) were not applicable as they did not contain option periods. One (1) procurement for the remanufacture of locomotives did contain option years and these options were properly evaluated as part of the original contract award.

43. Exercise of Options

Basic Requirement: Chapter V, Section 7.a (1) (a)(b)(c) 2 of FTA C 4220.1F requires that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

- An option may not be exercised unless it is determined that the option price is better than prices available at the time the option is exercised.

Discussion: Forty-four (44) procurements were reviewed for this requirement. Forty-three (43) were not applicable as they did not contain option periods. One (1) procurement for the remanufacture of locomotives did contain option years and these options were properly executed as Metra evaluated market pricing.

45. Advance Payments

Basic Requirement: Chapter IV, Section 2.b (5)(b) of FTA C 4220.1F indicates that FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.

Discussion: Of the forty-four (44) procurements reviewed for this requirement, none were found to be deficient. It is the policy of Metra not to use advance payments.

47. Time and Materials Contracts

Basic Requirement: Chapter VI, Section 2.c. (2) (b) of FTA C 4220.1F indicates that Time and Materials Contracts should be used only:

- After a determination that no other type of contract is suitable
- If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

Discussion: Of the forty-four (44) procurements reviewed for this requirement, all were found to be not applicable. Three (3) Metra contracts used the time and materials type. In all three (3) cases, Metra properly documented that no other contract type was suitable and included a not-to-exceed amount in the executed contract.

49. Liquidated Damages Provisions

Basic Requirement: Chapter IV, Section 2.b (6) (b) 1 of FTA C 4220.1F indicates that grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine.

Discussion: Of the forty-four (44) procurements reviewed for this requirement, eleven (11) were found to be not deficient and thirty-three (33) were found to be not applicable. In the eleven (11) contracts that included liquidated damages, Metra specified a rate per day for damages caused by the contractor for delays.

50. Piggybacking

Basic Requirement: Chapter V, Section 7.a. (2) of FTA C 4220.1F defines Piggybacking as an assignment of existing contract rights to purchase supplies, equipment, or services and requires that grantees piggybacking on another agency's contract must ensure that the original contract contained an assignability clause and that the terms and conditions of that contract meet the FTA requirements.

Discussion: Metra did not use piggybacking for any of the FTA funded procurements reviewed so this element was not observable.

51. Qualifications Exclude Price [A & E]

Basic Requirement: Chapter VI, Section 3.f. (3) (b) of FTA C 4220.1F indicates that qualifications-based competitive proposal procedures require that:

(1) An offeror's qualifications be evaluated

(2) Price be excluded as an evaluation factor

Discussion: Of the two (2) procurements reviewed for this requirement, none were found to be deficient.

53. Bid Security [Construction over $100,000]

Basic Requirement: Chapter IV, Section 2.h. (1) (a) of FTA C 4220.1F requires that the Bid Security:

- Equal five (5) percent of the bid price.
- Firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will execute contractual documents as may be required within the time specified

Discussion: Of the eight (8) construction procurements reviewed for this requirement, none were found to be deficient.

54. Performance Security [Construction over $100,000]

Basic Requirement: Chapter IV, Section 2.h. (1)(b) of FTA C 4220.1F requires that the Performance Security:

- Is executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract
- Amount is equal to 100 percent of the contract price

Discussion: Of the eight (8) construction procurements reviewed for this requirement, none were found to be deficient.

55. Payment Security [Construction over $100,000]

Basic Requirement: Chapter IV, Section 2.h. (1) (c) of FTA C 4220.1F requires that the Payment Security:

- Assures payment of all persons supplying labor and material.
- Includes required amounts as follows :
  (1) Fifty percent of the contract price if the contract price is not more than $1 million;
  (2) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
  (3) Two and a half million dollars if the contract price is more than $5 million.

Discussion: Of the eight (8) construction procurements reviewed for this requirement, none were found to be deficient.

Buy America Requirements: Rail Car/Locomotives

The purchase for the remanufacture of locomotives was reviewed for this requirement and was found to be not deficient in both the pre-award review and post-award audit.

V. FINDINGS OF DEFICIENCY IN FTA AND FEDERAL REQUIREMENTS

2. Contract Administration System

Basic Requirement: Chapter III, Section 3 of FTA C 4220.1F requires that grantees maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Discussion: Contract administration is not included as part of Metra's policies and procedures; it is only noted in the contract boilerplate terms and conditions. Metra had several key areas of concern related to contract administration. In several cases, the contract type was not clear from the contract documents. Several contracts were noted as cost-plus-fixed-fee; however, no fixed-fee was specified. Instead, these contracts are being administered as though they are time and materials of fixed-price contracts. In addition, Metra does not have a process in place to review final overhead rates on cost type contracts. Metra also had several findings of arbitrary action that were due in part to contract type issues with the contract administration system for ticket vending machines and the design of 22 Union Pacific Northern Line Bridges. In addition, out of scope changes were found during the review.

Metra should consider either replacing their cost-plus-fixed-fee contracts with time and materials contracts or specifying the fixed fee to be paid under the contract. A system for reviewing final overhead rates should also be put into place as part of the evaluation of price when making an award determination.

Best Practices: Timely execution of a definitive contract and up-to-date revisions to the contract are important to ensure control over contractor performance. Prompt and accurate documentation of contract changes is vital to equitable settlement and close-out of the contract. The FTA recommends that contract administration files routinely contain the following documentation:

- Executed contract and notice of award
- Basis of award
- Cost and price analysis
- Board of Director approvals
- History of the procurement
- Approvals or disapprovals of waivers and deviations
- Modifications and changes, including rationale for the change, determinations regarding their scope, and cost/price analysis of any price increases or decreases

Implementing a central contract administration and management function will ensure improved management of contractor performance. Contract types should be clearly stated for all contracts and contracts should be administered in the manner appropriate for the specific type of contract.

Corrective Action: Metra must respond with corrective action within ninety (90) days from the date of the final report. Training in contract administration and validation of the changes must be evidenced and provided to FTA.

Metra Response: Metra believes that a Contract Administration System is in place and that addressing the noted deficiencies within this Element No. 2, as Metra indicates it will do below, will ensure improved management of contractor performance.

Areas that were noted with deficiencies are; the contract type is not clear, there is apparent arbitrary action, and A & E type contracts lack review of overhead rates as part of the evaluation process. These are addressed and a corresponding course of action is provided in the following listed Deficient Elements.

Metra has a process in place to review the overhead rates on "cost plus fixed fee" contracts that require every contractor to submit the latest Illinois Department of Transportation (IDOT) provisionally approved or audited overhead rates. These rates are closely monitored against the Metra approved rates by the user departments to ensure consistency in the application. The contracts that do not have the approved Illinois Department of Transportation or audited rates are reviewed based on risk factors, and appropriate adjustments are made to the final contractor billings.

The implementation of time and material contracts and negotiating the overhead rates in the beginning as recommended by the FTA in this review would eliminate the issue of final overhead rate adjustments in the future. Element No. 19 further addresses Metra's course of action.

Reviewing Contractor's Response: The proposed corrective action and response to the deficiency is not adequate. The management of Cost-Plus-Fixed-Fee indirect rates goes beyond the audit of final rates. Adjustments to provisional billing rates must be done on an annual basis. Metra must provide evidence that it has reviewed provisional billing rates on an annual basis for all cost-plus-fixed-fee contracts, including the resulting differences in invoiced versus paid amounts to FTA within 30 days of the date of the final report.

Metra's contract administration system is not documented in policies and procedures. Copies of revised contract administration procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

5. System for Ensuring Most Efficient and Economic Purchase

Basic Requirement: Chapter IV, Section 1.b.c.e. of FTA C 4220.1F requires that grantee procedures provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Ensuring an economic purchase could include breaking out or combining purchases, or using annual contracts. Also lease versus buy analyses are required for applicable purchases to ensure the most economical approach.

Discussion: While Metra does have a system in place to ensure the most efficient and economic purchase through the use of a requisitioning process, there is a lack of procurement planning evidenced in the procurement files. In several cases, blanket purchase orders were put into place for the full budgeted amount rather than developing a cost build-up based on

anticipated future purchases. In addition, several cost-plus-fixed-fee type contracts did not have the fixed fee component called out in the executed contract.

Metra should base contract prices on an independent cost estimate and anticipated future use rather than approved budgets.

Best Practices: FTA's *Best Practices Manual* states that procurement plans covering several years may be an effective way to facilitate the most cost-effective purchasing management practices. The plans can identify major changes in procurement work load, and can obviate any tendency to rush procurement decisions or activities in ways that result in waste (e.g., through failure to consolidate major procurements) or risk non-compliance (e.g., through inadequate notice and non-competitive awards).

Typically the purchase of supplies will be evaluated annually based on the grantee's foreseeable needs and such factors as economic quantity breaks, warehousing space, shelf life, technology concerns, etc. Upon analysis of annual purchase patterns and quantities, the grantee may perceive that there is an opportunity to increase competition or improve pricing through consolidated purchasing, on-call contracts, piggybacking, or other contracting scenarios.

Corrective Action: Metra must respond with corrective action within ninety (90) days from the date of the final report. Training and validation of the changes must be evidenced and provided to FTA.

Metra's Response: Metra's budgets are developed with planned and analyzed material or service requirements. Metra develops requirements utilizing past, current and anticipated future needs. The reviewed files were blanket purchase orders that were released off Master Purchase Agreements (MPA). The MPA was publicly bid and had a purchase requisition, complete with an independent cost analysis. The blanket purchase orders were then released by project as funding became available.

Going forward, Metra will include in the contract file the evidence/basis for the developed/planned procurement.

Reviewing Contractor's Response: The proposed corrective action and response to the deficiency is not adequate. Contract values should be based on bona-fide expected volumes rather than the budgeted amount. Metra must provide the methodology for linking expected volumes of parts and services to the amount of any contract or modification to FTA within 30 days of the date of the final report. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

6. Procurement Policies and Procedures

Basic Requirement: Chapter III, Section 3.a of FTA C 4220.1F requires that grantees and sub-grantees use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in 4220.1F.

Discussion: Metra has procurement policies and procedures dedicated to Third Party Contracting Requirements and sets forth procurement procedures that reflect the many of FTA requirements. However, a detailed review of the Manual revealed that the following areas were not addressed:

- Requirements for the use of Time and Materials type contracts
- Tag-ons
- Prohibition on unreasonable requirements as qualifications to bid
- Prohibition on arbitrary action
- Prohibition on geographic preference for A&E contracts
- Requirement for clear and accurate specifications
- Requirements applicable to micro-purchases
- Requirements applicable to small purchases
- Procurement of Design-Bid-Build
- Procurement of Design-Build
- Requirement to complete an independent cost estimate
- Grantee's cost principles
- Bonding requirements for construction contracts
- Advance Payments
- Requirements for progress payments
- Requirements for liquidated damages
- Requirement for breach of contract remedies
- Requirement for termination clauses
- Federal statutory and regulatory requirements for contracts funded under Federal grants
- Requirements for revenue contracts

Interviews with staff noted that many of these requirements are included in the solicitation boilerplate and the file review indicated that Metra is complying with FTA requirements in many these areas. Metra should include these areas in their policies

and procedures even where they are covered by boilerplate language elsewhere in the procurement process.

Best Practices: The Grantee's policies and procedures guide users and contracting/purchasing staff in the proper execution of material and service acquisitions. A review of Circular 4220.1F will indicate the areas required to ensure compliance with Federal Regulations.

Corrective Actions: To achieve compliance, Metra must respond within ninety (90) days from the date of the final report and provide a detailed update to the Procurement Manual addressing these areas. Metra must also provide evidence of adequate training and independent audit evidence that procedures are being followed consistently.

Metra's Response: The review indicated that Metra is complying with FTA requirements as is provided in Metra's solicitation boilerplate.

Metra will include the FTA requirements in our policies and procedures. Estimated 90 days to complete.

Reviewing Contractor's Response: The proposed corrective action and response to the deficiency is not adequate. There were many aspects of the FTA procurement requirements that were not documented in policies and procedures, which may result in current and future deficiencies. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 90 days of the date of the final report.

7. Independent Cost Estimates

Basic Requirement: Chapter VI, Section 6 of FTA C 4220.1F requires that: "... in connection with every procurement action ... grantees must make independent estimates before receiving bids or proposals." Establishing a cost estimate in advance of the offer using a method independent from the perspective of offerors ensures a clear basis for analysis of cost or price, and provides essential procurement and financial planning information. Independent cost estimates are made by qualified engineering and functional staff who have first-hand knowledge of the commodity or service being purchased. The cost estimate is developed based on product knowledge, experience, and market status, and is used in performing price and cost analysis.

Discussion: Of the fifty-five (55) procurements reviewed, ten (10) were found to be deficient in this area. While Metra does include an estimate on their requisition, this process was not consistently followed. In addition, back-up documentation for the estimates listed on the requisition was not evident in the procurement files and Metra's policies and procedures do not require independent cost estimates for the sealed bid method of procurement.

Best Practices: Best Practices for obtaining independent cost estimates include:

- Estimates are received from design firm or in-house technical personnel for construction work,
- Published price lists or past pricing with inflation factors are analyzed, and
- Independent third-party staff member (not impacted by final procurement) develops these estimates.
- Use of a standard form, such as the template that appears in Appendix D is recommended.

Corrective Actions: Adherence to the requirement for independent cost estimates must be monitored and enforced consistently. To achieve compliance, Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of training and evidence of independent audit confirming that procedures are being followed consistently.

Metra's Response: As part of Metra's Pre-Award Activity, and listed on Metra's Checklist is, "Receiving an independent Cost Estimate of Contract/Purchase Order Valuation." Metra uses this checklist as part of our contract file administration.

Going forward emphasis will be placed upon the appropriate staff to improve supplying adequate supporting documentation.

Reviewing Contractor's Response: The proposed corrective action and response to the deficiency is not adequate. Evidence of the required independent cost estimate was not present in many of the reviewed procurement files. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

12. Arbitrary Action

Basic Requirement: Chapter VI, Section 2.a (4)(j) of FTA C 4220.1F indicates that any arbitrary action in the procurement process is considered to be restrictive of competition. Arbitrary actions can occur in non-competitive as well as competitive procurements. Proper file documentation can help evaluate whether or not an arbitrary action occurred.

Discussion: This element is deficient based on five (5) procurements completed by Metra as follows:

- In one (1) purchase for a revenue accounting system, the Brooks Act method of procurement was used inappropriately. The original solicitation documents and Best and Final Offer (BAFO) documents stated that cost was an evaluation criteria. After the BAFO was received, the Brooks act method was implemented per the direction of the Executive director and award was made without considering cost.
- In one (1) procurement for QA oversight and general program support the details of the scoring methodology were not documented to support that the awarded contractor did receive the highest score.

- In one (1) procurement for ticket vending machines was documented as being a cost-plus-fixed-fee type contract; however, the price was stated as a firm-fixed-price in the executed contract.
- In one (1) procurement for the design of 22 Union Pacific Northern Line Bridges, there were several no cost time extensions granted. At the end of the project, an increase in the contract dollar value was added to cover these time extensions with no supporting documentation.
- In one (1) A&E procurement for manufacturing engineering in the rehabilitation of 176 bi-level passenger railcars, pricing was requested from all firms despite the use of the Brooks Act method of A&E procurement being specified in the solicitation documents.

Best Practices: Consistency in the procurement process is the best method of obtaining compliance for arbitrary action. In addition, concerns regarding arbitrary action can be eliminated with proper file documentation, such as bid opening records, bid comparison sheets, award decision documentation and negotiation memoranda. The grantee should ensure that the procurement process includes documentation that accurately portrays what occurred and that approvals are made to evidence proper decision-making.

Corrective Actions: Consistent and proper file documentation can help evaluate whether or not an arbitrary action occurred. To achieve compliance, Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The five (5) procurements that were identified as deficient all received multiple bids or proposals, and the respective contract files did contain information about the process that was used for each solicitation.

Metra will ensure that the procurement process will be consistent and will use proper file documentation to avoid arbitrary action. It will consist of proposal tabulation sheet(s) for RFP's and bid tabulation sheet(s) for IFB's. In addition, all award decision making documentation will consist of scoring sheet(s) and negotiation documentation, if required, for all RFP's and technical evaluation for IFB's. See Element No. 42 for additional detail to contract file content and organization.

Reviewing Contractor's Response: The proposed corrective action and response to the deficiency is not adequate. Any arbitrary finding is a serious one since the underlying documentation is not available to support the award decision or the procurement had fatal flaws in the process. In the case of the QA oversight contract, the deficiency was egregious. There was no support documentation as to the reasons why the awardee was rated so much higher than the other firms. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report. FTA will conduct a separate review of the QA oversight contract to determine whether it is eligible for federal funds.

13. Brand Name Restrictions

Basic Requirement: Chapter VI, Section 2.a (3)(4)(f) of FTA C 4220.1F indicates that specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its' salient characteristics is considered to be restrictive of competition.

Discussion: Of the fifty-one (51) procurements reviewed, forty-three (43) were found to be not applicable, one (1) was found to be not deficient, and seven (7) were found deficient. The seven (7) procurements deemed deficient included a statement that equals may be offered by suppliers; however, the salient characteristics were not noted.

Best Practice: The goal of the solicitation process is to determine the best buy. By specifying brand names, competition can be limited. Metra should work with requisitioners to determine whether brand names can be deleted from design or performance specifications improving the opportunity for full and open competition. Should the brand name be required, the designation "or equal" will allow potential bidders to propose alternate brand names. Procurement personnel must predetermine those salient physical and functional characteristics of the brand name product in order to compare the proposed alternatives.

Corrective Action: Consistent and proper file documentation can help evaluate whether or not an arbitrary action occurred. To achieve compliance, Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Of the fifty-one (51) procurements reviewed, forty-three (43) were found to be not applicable, one (1) was found to be not deficient, and seven (7) were found deficient. Please note that the FTA/IDOT Addendum for Material Procurements., Page 1, Item No. 3 states: "Approved Equals and Brand Names. Where a feature, component, or item is specified by brand name in the Specifications, the words 'or Approved Equal' are implied. All approvals and request for approvals of proposed Approved Equals must be in writing. Specification by brand name of components or equipment in the Specification shall not relieve Contractor from its responsibility to design and construct the Equipment and perform the work in accordance with the general performance requirements of the Specifications and these General Provisions."

The seven (7) procurements deemed deficient included a statement that equals may be offered by suppliers; however, the salient characteristics were not noted. The Materials Management Department will return purchase requisitions to the requisitioning departments when they do not list the salient characteristics. Following the FTA review this process was immediately implemented and being followed by staff.

Reviewing Contractor's Response: The proposed corrective action is acceptable. However, copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

15. Contract Term Limitation – Rolling Stock

Basic Requirement: Chapter IV, Section 2.e (10) of FTA C 4220.1F requires that grantees do not enter into any contract for rolling stock and replacement parts with a period of performance exceeding five (5) years inclusive of options.

Discussion: Of the fifty-five (55) procurements reviewed for this requirement, forty-five (45) were found to be not applicable, nine (9) were not deficient, and one (1) was found deficient. The contract for manufacturing engineering in the rehabilitation of 176 bi-level passenger railcars was for a six (6) year period of performance. There was no documentation to indicate that FTA had authorized the longer contract period.

Best Practices: Grantees are authorized to procure rolling stock or other supplies and services by a number of methods, including buying on an annual or on an as-needed basis, and also on a multi-year basis. FTA requirements should be incorporated into the procurement process to provide for the need to monitor contracts having the potential for more than a five year period of performance and to ensure that all procurements have closed-ended periods of performance. Grantees should also provide training in this area so that all involved in the purchasing process will be aware of this requirement. Grantees should establish a practice of regularly reviewing contracts for expiration (bid calendars serve as excellent tools for this purpose) and ensure that adequate time exists for re-procurement processes to comply with this requirement.

Corrective Action: All contracts for rolling stock and replacement parts must have a period of performance for placing orders that does not exceed five (5) years inclusive of options. Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: There was a single contract found to be deficient regarding this Element. It was a six (6) year contract for the "Kitting" of material purchased by Metra and delivered to the contractor for design & engineering of each kit, i.e., the contractor designed and engineered each kit for Metra. Metra then competitively bid out all material for the kits needed for the car rehab program(s). Metra estimated the duration for kitting the car rehab material to last six (6) years.

Metra will modify the subject contract to conform within the five (5) year period.

Reviewing Contractor's Response: The Metra corrective action is not adequate. This is not the only element for which this procurement was deficient. The underlying procedure and approval process did not ensure that a contract for rolling stock exceeded 5 years was signed by Metra.

FTA will conduct a separate review of this contract to determine whether it is eligible for federal funds. The misuse of the Brooks Act for this procurement as well as the result of deficiencies in other elements of the PSR was egregious. In addition, proposals were re-evaluated after presentations and this process was not communicated to prospective contractors. Evidence of training must be provided to FTA regarding the requirement to limit the ordering period of rolling stock to a maximum of five years. All of these actions must be completed within 30 days of the date of the final report.

16. Written Procurement Selection Procedures

Basic Requirement: Chapter III, Section 3.a of FTA C 4220.1F requires that grantees have written selection procedures for procurement transactions. As stated in the Circular "all solicitations shall identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals." This ensures that procurements are awarded in a fair and equitable manner.

Discussion: Forty-one (41) procurements were reviewed for this requirement. Thirty-two were not deficient and nine (9) were found to be deficient. Metra has a process in which proposals are rescored after presentations are completed; however, that process is not stated in the evaluation process provided in the solicitation documents for the RFP method of procurement. In addition, Metra uses a consensus scoring process rather than having an individual score for each proposal from each member of the evaluation committee resulting in a lack of transparency throughout the evaluation process.

Metra should alter the evaluation process such that each member of the evaluation committee scores each proposal. These scores should then be added together to determine the final score. The evaluation committee may meet to discuss why members scored proposals the way they did; however, documentation of such discussions should be included in the procurement record.

Best Practices: The grantee should establish written selection procedures in every solicitation. Once proposals are received, evaluators should follow these criteria when considering the proposals submitted and document the evaluators' findings. Documentation for all procurements should be maintained in a central location regardless of award amount. The request for quotation for any small purchase should contain language identifying the basis for award (such as lowest priced responsive offer) and a copy of it should be included in the file.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The deficient files refer to Metra's RFP evaluation process. Metra does have established evaluation processes. As noted in the review, proposals are re-scored after interviews. The review noted that this particular aspect of the process is not made apparent or clear to proposers.

Following the FTA review, staff immediately included in all RFP Evaluation Processes that if interviews are to be conducted, the proposer presentation may be re-scored.

Reviewing Contractor's Response: This corrective action is acceptable, but copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

18. Award to Responsible Contractors

Basic Requirement: Chapter VI, Section 8.b of FTA C 4220.1F requires that grantees make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Discussion: Of the forty-four (44) procurements reviewed, twenty-seven (27) were found to be deficient and seventeen (17) were found to be not deficient. Metra does have a standard process in place to indicate on the bid tabulation sheet that contractor responsibility and the Federal excluded parties list have been checked. In the twenty-seven (27) procurements found to be deficient, this documentation was not provided on the bid tabulation sheet.

Best Practices: There are many proven methods to determine whether or not a supplier is responsible, including:

- Visiting the supplier's facility;
- Examining prior work performed by the supplier;
- Checking financial and client references;
- Evaluating prior performance reports; and reviewing the Federal debarred/suspended contractor listing.

The consistent usage of a standard form, such as the template provided in Appendix E (Responsibility Determination Form), would ensure that the responsibility determination is performed completely and consistently.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: As noted in the review, Metra does have a standard checklist process in place on the bid tabulation form regarding the prospective contractor's responsibility and the Federal excluded parties list. The review noted deficiencies in informal procurements. Prior to this review all bid tabulation sheets for formal bids (over $10,000.00) were properly filled out, including debarment.

Following the FTA review and effective immediately, all bid tabulation sheets for formal and informal bids (under $10,000.00) will be checked and initialed by the buyer for

responsibility and the Federal excluded parties list. This process is in place and being used by the appropriate staff.

Reviewing Contractor's Response: This corrective action is acceptable but copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

19. Sound and Complete Agreement

Basic Requirement: Chapter III, Section 3.b. of FTA C 4220.1F requires that all contracts include provisions to define a sound and complete agreement. It should include proper specifications that allow for "administrative, contractual, or legal remedies . . . and a termination for cause and for convenience" clause.

Discussion: Of the forty-four (44) procurements reviewed, two (2) were found to be deficient. In both cases the contract documents do not clearly indicate the contract type. In one (1) procurement for blanket signal engineering services the contract does not specify whether it is firm-fixed-price or cost-plus-fixed-fee. In another procurement for manufacturing engineering in the rehabilitation of 176 bi-level passenger railcars on a cost-plus-fixed-fee basis, the contract does not include the fixed-fee component of the contract value.

Best Practices: All procurements above the micro-purchase threshold should be definitized by a written contract approved by appropriate legal and procurement personnel. The grantee may use checklists to remind involved personnel of the contract clauses required by the FTA in the Circular and the Master Agreement.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Two (2) contracts were found to be deficient. In both cases the contract documents do not clearly indicate the contract type.

The contract for the blanket Signal Engineering Services is a "not to exceed $500,000.00" contract. The contract specified "total actual costs and fixed fee." Exhibit 5 in the contract is the Employee Compensation Schedule, listing the hourly rates for the contractor's staff, audited rate of 147.5%, and a profit rate of 10%. The file contains supporting documentation for the cost of task assignments. Metra's standard 4400 Cost Form indicates that the costs match the rates and fees listed on Exhibit 5.

The file for the Material Kitting & Manufacturing Engineering of 176 Bi-Level Passenger Cars contains Exhibit 2, Price Proposal. The Exhibit indicates the fixed fee value will include the labor cost and the Burden Rate is 10% of the fixed labor cost.

As discussed during the review pertaining to A & E blanket type of contracts, Metra did not negotiate the fixed hourly or burden rates prior to contract approval. The actual

negotiation occurred at the time a "task" was assigned, and then estimated hours were included along with the hourly and burden rate.

Following the FTA review, staff immediately incorporated the negotiation process to establish the fixed hourly rates and burden rate prior to any contract approval for all blanket fixed-fee type A & E contracts.

Reviewing Contractor's Response: The corrective action is not adequate. In the deficient contract documents, the cost-plus-fixed-fee type of contract is not denoted and the estimated costs and fixed fee is not included in the contract or revised when tasks or changes are implemented. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report. FTA will conduct a separate review of the Blanket Signal Engineering and the Material Fitting contracts to determine whether these contracts are eligible for federal funds.

24. Clear, Accurate and Complete Specifications

Basic Requirement: Chapter III, Section 3.a.(1)(a)(b)(d) of FTA C 4220.1F requires that grantees have a clear and accurate description of the technical requirements for the material, product, or service to be procured. Complete and accurate specifications are required to ensure that all potential bidders are given equal knowledge on grantee's requirements. Moreover, Section 8.c. (1) also indicates that a clear and adequate description of the product for services must be included in all solicitations.

Discussion: Of the fifty-four (54) procurements reviewed, seven (7) were found to be deficient. The end user develops the specification at Metra and in most cases the specifications meet the FTA requirements. In seven (7) of the procurements the specification either listed only manufacturer part numbers or generic, bulleted, lists of the tasks to be performed. For example, an engineering contract listed tasks such as "provide support" and "assist" with no additional details. Metra should include a detailed description of all requirements in enough detail to allow contractors to propose solutions and increase competition.

Best Practices: The FTA Best Practices Manual suggests that the specifications describe the grantees needs "as completely, clearly, accurately, and unambiguously as possible" in order to prevent the shipment of inadequate goods, and to prevent claims arising from errors. The grantee must ensure that specifications are clearly written and reviewed by enough people to ensure completeness and to insist that all orders and contracts contain clear specifications.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Of the fifty-four procurements reviewed, seven (7) were found to be deficient. Metra's response is partially addressed in Element 13 above, relating to "Brand Name" reference and listing salient characteristics.

The user departments will be tasked with "beefing-up" specifications and staff will hold pre-bid meetings, when appropriate, to address any questions that potential vendors may have. Staff will also continue to return purchase requisitions that are not complete back to the requisitioning department.

Reviewing Contractor's Response: This corrective action is acceptable but copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

25. Adequate Competition- Two or More Competitors

Basic Requirement: Chapter VI, Section 3.i (1)2.a. of FTA C 4220.1F indicates that adequate competition exists when two or more responsible bidders are willing and able to compete effectively for the business.

Discussion: Of forty-one (41) procurements reviewed, three (3) were found to be deficient. A procurement for elevator design and installation services received only one bid; a canvass of other potential firms revealed that several chose not to bid due to minimum qualifications that were included as an amendment to the solicitation. Another procurement for rail grinding services indicated that the previous award was made on the basis of a single bid in the solicitation documents. This may have prevented firms from participating. A procurement for IT system storage and hardware received a single bid due to a brand name being specified in the specifications. Metra does have an effective process in place to canvass suppliers when only one bid is received.

Best Practices: Efforts should be made to re-bid those items where only one supplier had submitted a bid under a specific IFB. In those instances where the judgment is made that there are no reasonable alternate sources, a single source justification must be included in the file describing the reasons for that determination. See the form attached as Appendix G for an example of a Non-Competitive Procurement Justification. Further, the grantee should pre-qualify suppliers so that an ample number of suppliers bid on its requirements. See the form attached as Appendix F to assist in aiding Metra in making decisions when only one bid or proposal is received.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Three (3) files were noted as deficient. In all three solicitations, specifications were very specific and detailed. As was noted in the review, Metra has an effective process in place to canvas suppliers when only one bid is received. Additionally, staff does review the solicitation process and canvas responses to determine if there is adequate competition or that a single source is justified.

Metra concurs, a single source justification will be included in the file at the conclusion of the canvas review, or it will be noted that Metra will re-solicit bids/proposals based upon the canvas results.

Reviewing Contractor's Response: Metra's corrective actions are not adequate. In the noted procurements, there was information included in solicitation documents that affected the number of bids received. The corrective action should address the process to ensure that solicitations do not include this prohibitory language. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

36. Evaluation [RFP]

Basic Requirement: Chapter VI, Section 3.d (2)(b)(d) of FTA C 4220.1F requires that:

- All evaluation factors are identified along with their relative importance.
- Grantees have a method in place for conducting technical evaluations of the proposals received and for selecting awardees.

Discussion: Of the twelve (12) procurements reviewed for this requirement, three (3) were found to be deficient. Metra specified the evaluation factors along with their relative importance in the majority of the solicitations reviewed; however, in two (2) cases, there was no statement that the criteria were listed in order of importance. In one (1) procurement for manufacturing engineering in the rehabilitation of 176 bi-level passenger railcars the evaluation criteria were not followed when making the award. Metra's procedures for conducting solicitations are in line with the FTA requirements. Metra should ensure the consistent application of these procedures.

Best Practices: The chosen method of solicitation must take into account factors other than price alone. Price must always be a factor in establishing the competitive range, unless the work envisioned is Architectural and Engineering services. For construction type procurements where design must occur during the performance period, either a design-build or two-step procurement method should be used. The intention to use a specific method of procurement must be stated in all solicitation documents in order to provide clear expectations from potential contractors.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra does have established evaluation processes.

Going forward, the Evaluation Criteria "in order of importance" will be noted starting immediately. This process has already been implemented. The appropriate staffs in Professional Services have already reviewed the procedure.

Reviewing Contractor's Response: Metra's corrective action is not adequate. The corrective action should be focused on ensuring that this does not happen again. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report. As noted previously in this section, FTA will conduct a separate review of this contract to determine whether it is eligible for federal funds.

37. Price and Other Factors [RFP]

Basic Requirement: Chapter VI, Section 3.d (2)(e) of FTA C 4220.1F indicates that:

- Awards made to firm whose proposal is most advantageous to the grantee's program with price and other factors considered
- Grantees may award to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value." "Best value" language must be in the solicitation.

Discussion: Of the twelve (12) procurements reviewed for this requirement, four (4) were found to be deficient and eight (8) were found to be not deficient. Deficient findings all relate to the improper use of the Brooks Act method of procurement. In some cases Metra used the Brooks Act for services that were not related to A&E, while in other cases the firms were correctly evaluated excluding price but were then given a budgeted amount as the contract award with no record of price negotiations.

Best Practices: The Grantee should ensure that the A&E method of procurement be used only when construction work is anticipated. Decision criteria should be established to identify when a purchase is an A&E construction method or any other professional service. Documentation of the award justification based on price and other factors should clearly identify the key considerations.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra uses the Brooks Act method of procurement for A & E and construction management type contracts. The Request for Proposal for these contracts lists the number of contracts that will be awarded and the "not to exceed" amount for each type of contract. The contract award may be for signal design, bridge design, or construction management, etc.

Metra concurs and Element 19 above addresses how future A & E typo contracts will be negotiated prior to contract award for fix-fee contracts.

In Element 37 the Reviewer indicates that Metra used the Brooks Method improperly for the non A & E services that were identified during the review. In these contracts, cost was an element of the evaluation; however, the technical portion was opened, evaluated, and scored first, and then the cost portion was opened and evaluated. Finally, the two portions,

technical and cost, determined the total score for the respective proposer. The reason justifying keeping cost separate was so that the cost portion would not influence the evaluators' analysis of the technical portion of the proposal.

Reviewing Contractor's Response: Metra's response is not adequate. Metra used the incorrect method of procurement, and should create a corrective action that prevents re-occurrence in the future. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report. FTA will conduct a separate review of the contract for the manufacturing and engineering of the 176 bi-level passenger railcars to determine whether this contract is eligible for federal funds.

39. Cost Analysis Required [Sole Source]

Basic Requirement: Chapter VI, Section 6.a of FTA Circular 4220.1F confirms that a cost analysis must be obtained when the offeror submits elements (labor hours, overhead, materials, etc.), when the price competition is inadequate, when there is only a sole source available, or when an order is changed. The recipient is not obligated to obtain a cost analysis where price reasonableness of the proposed contracts can be justified on the basis of a catalog or market price of a commercial product sold in large quantities to the general public, or where law or regulation have established price.

Discussion: Of the three (3) procurements reviewed for this requirement, all three (3) were found to be deficient. The file documentation for the procurement of door closers and anti-freeze devices contained a price analysis but did not have an analysis of profit or fee. A cost breakdown was provided by the supplier in a procurement for the relocation of Demarc but no analysis was conducted. A final procurement for fleet management services utilized GSA pricing which is not allowable when using FTA funds.

Best Practices: The grantee may consider the following Best Practices in cost analysis--

- Verification of cost or pricing data and evaluation of cost elements
- Evaluation of effect of offeror's current practices on future costs
- Comparison of costs proposed with actual or previous cost estimates
- Verification of offeror's costs with Federal cost principles

A standard form, such as the one in Appendix H may be used to document compliance with this requirement.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Of the three (3) procurements reviewed for this requirement, all three (3) were found to be deficient. The purchase order file for door closers and anti-freeze devices did contain a price analysis and Metra's Audit Department cost analysis summary (see

attached Element 39). Metra's Audit Department conducted an independent evaluation of price as the vendor declined to provide costs.

The third purchase order identified for Fleet Maintenance was inadvertently coded incorrectly (input error), which identified it using Federal funds. If is not funded with Federal funds and the funding source has been corrected. See Element No. 38.

It is Metra's practice to perform a cost analysis on all federally funded sole source procurements. The appropriate staff has reviewed the required process to ensure its inclusion in the contract file.

Reviewing Contractor's Response: Metra's response is not adequate as it did not address the deficiency. Metra does not have an adequate process to conduct cost analysis and the corrective action does not address how cost analyses will be improved to be compliant in the future. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

41. Cost or Price Analysis

Basic Requirement: Chapter VI, Section 6.a. of FTA C 4220.1F requires that grantees perform a cost or price analysis in connection with every procurement action, including contract modifications.

Discussion: Fifty-three (53) procurements were reviewed. Six (6) were found to be not deficient, and forty-seven (47) were found deficient. Metra does not have a consistent process in place to complete a cost or price analysis. While several good examples of price analysis were found, the documentation of this analysis was missing in the majority of the files reviewed.

Best Practices: The grantee must ensure that all contract specialists understand the elements of price analysis, and that files reflect the use of such analysis to show a logical determination of price reasonableness. Sources of information that are available to conduct a price analysis include:

- Comparisons with other competitive proposals
- Previous contracts
- Catalog or market prices
- Historical prices and trending
- Independent cost estimates

One method to record this analysis is through use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so such as catalog or market prices offered in substantial quantities to the general public, regulated prices (e.g., for many utilities purchases), or comparison with recent prices for similar goods and services.

The grantee should conduct a more thorough analysis of price variances on bids, examining variances from the independent estimate as well as the differences between bids recorded. The form included as Appendix I provides an example of price analysis factors to be considered.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Fifty-three (53) procurements were reviewed. Six (6) were found to be not deficient, and forty-seven (47) were found deficient.

While the review did find some good examples of price analysis, the documentation of this analysis was missing in the majority of the files reviewed.

Metra concurs and will implement the recommendation and modify Metra's bid tabulation document sheet to include a statement, based upon staff's analysis, that the price quoted by the lowest responsive and responsible bidder is fair and reasonable based on competitive bids. Additionally, the price/cost analysis requirement is included in the contract file checklist. The process has been implemented with the appropriate staff.

Reviewing Contractor's Response: The corrective action is adequate but copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

42. Written Record of Procurement History

Basic Requirement: Chapter III, Section 3.d (1) of FTA C 4220.1F requires that grantees maintain records detailing the history of each purchase. At a minimum, the following must be included in the procurement files:

- The rationale for the method of procurement;
- Selection of contract type;
- Reasons for contractor selection or rejection;
- The basis for contract price.

This requirement applies to all procurements except micro-purchases.

Discussion: Of the fifty-four (54) procurements reviewed, fourteen (14) were found to be deficient. In general, there is a lack of file organization at Metra and minimal documentation on procurement planning activities. In the fourteen (14) procurement files found to be deficient, the reviewing contractor was unable to determine the reason for the contractor selection or the basis for the contract price.

Best Practices: The *Best Practices Manual* states "a properly documented procurement file provides an audit trail from the initiation of the requirement to the beginning of the contract." In addition, a well-documented file can be interpreted on its own, without any

assistance or additional information. Other agencies use periodic internal audits of the files and the use of checklists to ensure compliance. The grantee could modify its Purchase Summary to list the required elements of the Circular, such as the solicitation method and contract type (sealed bid- fixed price, competitive proposal- fixed price, competitive proposal- time and materials, or sole source).

The grantee should initiate a method of central tracking of their procurement activity. A policy describing the need for important file documentation to be captured in purchasing files should be established. Training should be provided to all personnel involved in the procurement process to ensure that proper procedures are being followed. In addition, the use of checklists would facilitate this process. The *Best Practices Procurement Manual* recommends the following procurement file documentation where appropriate:

- Purchase request, acquisition planning information and other pre-solicitation documents
- Evidence of availability of funds
- Rationale for the method of procurement (negotiations, formal advertising)
- List of sources solicited
- Independent cost estimate
- State of work/scope of services
- Copies of published notices of proposed contract action
- Copy of the solicitation, all addenda and all amendments
- Liquidated damages determination
- An abstract of each offer or quote
- Contractor's contingent fee representation and other certifications and representations
- Contracting Officer's determination of contractor responsiveness and responsibility
- Cost or pricing data
- Determination that price is fair and reasonable including an analysis of the cost and price data
- Required internal approvals for award
- Notice of award
- Notice to unsuccessful quoters or offerors and record of any debriefing
- Record of any protest
- Bid, Performance, Payment or other bond documents and notices to sureties
- Required insurance documents, if any, and
- Notice to proceed

See Appendix J for examples of file checklists to be made for different contracting methods and change orders.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Of the fifty-four procurements reviewed, fourteen (14) were found

to be deficient. In general, there is a lack of file organization at Metra and minimal documentation on procurement planning activities. In the fourteen (14) procurement files found to be deficient, the reviewer was unable to determine the reason for the contractor selection or the basis for the contract price.

Metra's course of action is as follows:

A "Contract/Purchase Order File Content Check List Form for Contracts/Po's Over $10,000. 00" is in the file for all contracts solicited and awarded using the IFB or the RFP process. The checklist consists of Date, Initials (Buyer), and Activity of the following:

Pre-Award Activity

1. Requested Independent Cost Estimate of Contract/Purchase Order Valuation
2. Received Independent Cost Estimate of Contract/Purchase Order Valuation
3. Copy of Requisition
4. Invitation for Bids Memorandum with Pre-bid summary
5. Certified Copy of Invitation for Bids
6. Internal Request for Quotation Checklist to Appropriate Using Department
7. Addenda and/or other External Correspondence/Internal Memoranda
8. Applicable Exhibits Included
9. Bid/Proposal Tabulation, Blue Copy of P.O. or Original Contract
10. Received Evaluation Form IFB/RFP Evaluation Loner and Supportive Selection Documentation sent to/from Using Department
11. Internal/External Letters/Memoranda, i.e. DBE Correspondence, Short List, Insurance
12. Protest Notification Forward to Grants Department (If Applicable)
13. Protest Resolution Forward to Grants Department (If Applicable)
14. 4400 Form for A & E/Professional Services Contract
15. Price/Cost Analysis (When Required)

Post Award Activity

1. Performance Labor Material Bond (Construction Only)
2. Notice to Proceed/Vendor Acknowledgment
3. Contracts Completion Form
4. Contract/P.O. Complete/100% Received

The file also has a list of vendors solicited for an IFB or RFP. The requisition is reviewed by Metra's Grants Department to assure that funds are available prior to processing the IFB or RFP solicitation.

Additionally, see the attached instructions for the Organization of Contract File Folders, Operating Files and Purchase Orders (Capital and Operating). This process is in place and being used by the appropriate staff.

Reviewing Contractor's Response: Metra's response is not adequate because it does not address the deficiency. For example, the proposed checklist did not include the required

determination of the procurement method and the contract type in Pre-Award activities. Copies of revised procedures and processes, copies of proposed checklists by procurement method, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

44. Out of Scope Changes

Basic Requirement: Chapter VI, Section 3.i. (1)(b) of FTA C 4220.1F indicates that a contract change that is not within the scope of the original contract is to be considered a sole source procurement. The grantee must justify why an amendment was the only feasible course of action, and must comply with FTA requirements for cost analysis and profit negotiation.

Discussion: The reviewing contractor noted three (3) contract changes in the procurements reviewed that were out of scope and were not treated as sole source procurements. In the installation and service of core routers the contract value was increased from $120,000 to $220,000, an increase of 83%. A procurement for ticket vending machines increased the number of machines from 14 to 29; there was no documentation that these increases were evaluated. In the procurement for an ADA station upgrade, the installation of bike racks was added to the scope of work without the proper sole source justification.

- Best Practices: A change order that is not within the scope of the original contract is considered a cardinal change or a sole source procurement by the FTA. Significant case law exists to support the definition(s) of out of scope changes. If the modification is so substantive that it changes the complexion of the deal, it is out of scope. If the modification might have been fairly and reasonably within the contemplation of the parties at the time the contract was signed it may be in scope. Questions to be asked to warn of out of scope changes are:

- Is the end item or service substantially changed (by an individual modification or as a cumulative effect of several modifications)?
- How does the change price compare to the contract price? Is it substantial?
- What resources are required to accomplish the new work? A different set of resources signals an out of scope change.
- Would the competitive factors be different if the change were proposed as part of the original contract?
- Would different firms have bid?

See Appendix K for an example of a form to be used to assess each contract change.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The review noted three (3) contract change orders in procurements that were out of scope and were not treated as sole source procurements.

The change order for the installation and service of core routers consisted of extending the contract completion date by one year at the same pricing, and to increase the value of the contract for the work performed during this period. The fees of the original contract remained the same during the extended period of performance.

Metra concurs and the processing for the additional routers should have been done as a sole source.

In reviewing the ticket vending machine file for the change order, Metra found that the number of machines was increased from 15 to 29, and the file has documentation dated March 26, 2010 from Metra's Audit Department. The documentation states that the "quoted price for the Change Order appears reasonable." The additional 14 vending machines were ordered at the direction of the Executive Director.

Metra concurs and the processing for the additional machines should have been done as a sole source.

The change order for the ADA improvements at the BNSF - Route 59 station upgrade consisted of widening the existing platform, adding additional lighting, sidewalk widening, landscaping, and replacing an existing bike rack that was in place prior to the improvements. The bike rack was removed for the improvements but was damaged in the process and was not salvageable.

Metra concurs and the processing for the bike rack should have been done as a sole source.

Reviewing Contractor's Response: Metra's response is not adequate because it doesn't address the deficiency. There is no process, procedures, rules, or checks and balances proposed to ensure that sole source amendments are properly reviewed. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

46. Progress Payments

Basic Requirement: Chapter IV, Section 2.b. (5) (c) of FTA C 4220.1F indicates that progress payments are allowed if:

(1) They are only made to the contractor for costs incurred in the performance of the contract.
(2) Adequate security is obtained (such as taking title, letter of credit or equivalent means)

Discussion: Forty-four (44) procurements were reviewed for this requirement. Twenty-five (25) were not applicable, ten (10) were not deficient, and nine (9) were found deficient. Metra has two different standard clauses for progress payments; in one version of the clause the provision that title will transfer to Metra upon payment is included, in the other version, this language is missing. Metra should ensure that all contracts containing progress payments include the provision that title for the completed work will transfer to Metra upon payment.

Best Practices: The grantee should develop "boilerplate" payment clauses detailing the FTA requirements that are inserted into any contract containing a provision for progress

payments. Such clauses should also be part of any purchase order or contract containing provisions for progress payments in advance of project completion.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The deficient files were lacking the statement that "title for the completed work will transfer to Metra upon payment." Metra's construction contracts do contain the appropriate language. However, the deficient files lacking the appropriate language were procurements under $10,000.

Metra concurs and will notify all bidders that Federal statutory and regulatory applicable requirements do apply for federal funded purchases. Additionally, required clauses will be maintained in the respective procurement file. This process will be in place within 30 days.

Reviewing Contractor's Response: Metra's response is not adequate because it didn't fully address the deficiency. All contracts with deficient progress payments should be revised, and the standard language should be included in all current and future solicitations and contracts. Evidence of the contract modifications for all deficient contracts and copies of revised procedures and processes, copy of the revised contract language, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

48. Cost Plus Percentage of Cost

Basic Requirement: Chapter VI, Section 2.c. (2) (a) of FTA C 4220.1F indicates that the cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Discussions: Of the forty-four (44) procurements reviewed for this requirement, forty-one (41) were not deficient and three (3) were found to be deficient. In two (2) cost-plus-fixed-fee procurements for construction management services, there was a fixed-fee by task order rather than an overall fixed-fee for the contract. Under the cost-plus-percentage-of-cost methodology there is no stated limit to the amount of fee the supplier may be able to receive. The procurement for ticket vending machines was documented as a cost-plus-fixed-fee contract; however, no fixed-fee was noted in the compensation provisions. Metra should include a total fixed-fee for all cost type contracts.

Best Practices: The cost-plus-a-percentage-of-cost type of contract is banned in Federal Acquisition and cannot be used by Grantees.

Corrective Action: Metra should revise all contracts that do not state a fixed-fee and ensure that all contracts include language about the type of contract intended. Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The Element's Discussion listed on the FTA Procurement System Review states:

"Of the forty-four (44) procurements reviewed for this requirement, forty-one (41) were not deficient and three (3) were found deficient. In two (2) cost-plus-fixed-fee procurements for construction management services, there was a fixed-fee by task order rather than an overall fixed-fee for the contract. Under the cost-plus-percentage-of-cost methodology there is no stated limit of fee the supplier may be able to receive. The procurement for ticket vending machines was documented as a cost-plus-fixed-fee contract; however, no fixed-fee was noted in the compensation provisions. Metra should include a total fixed-fee for all cost type contracts."

Metra does not concur. Metra's 4400 Cost Form 4400 for construction contracts does have a fixed-fee field on the form. However, the contract for the vending machines states: "the prices stipulated on Metro's Form 4400 (or any other cost or price schedule) which is either attached as Exhibit 2 of this Agreement, or is incorporated by reference, as directed by Metra." This contract did not require a Form 4400 since price lists were in Exhibit 2. Exhibit 2 consisted of three price lists:

The first price list is for the vending machines at a unit price of $1,234.94 each; the second price list is for the Data System Elements at a lot cost of $64,800.00, and in addition, a total of four lots of various spare parts at a total cost of $105,070; and the third price list is for various communication, transactional, maintenance and customer support fees at a rate of per transaction or per month fees.

The other two (2) deficient findings pertained to A & E blanket type of contracts, Metra did not negotiate the fixed hourly or burden rates prior to contract approval. The actual negotiation occurred at the time a "task" was assigned, when estimated hours were included along with the hourly and burden rate.

Metra concurs and effective immediately the process has boon implemented for negotiating to establish the fixed hourly rates and burden rate done prior to any contract approval for all blanket fixed-foe type A & E contracts.

Reviewing Contractor's Response: Metra's response is not adequate. Metra should amend the construction management contract to include an overall estimated costs and fixed fee. Evidence of this amendment must be provided to FTA as well as the history of all amendments with associated costs and fixed fees. Further, all existing contracts of this type should be revised. A list of these contracts, the history of cost and fixed fee additions, and evidence of contract modifications incorporating this change must be provided to FTA. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

52. Serial Price Negotiations [A&E]

Basic Requirement: Chapter VI, Section 3.f. (3) (d) of FTA C 4220.1F indicates that under the Brooks Act:

- Negotiations be conducted with only the most qualified offeror
- Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

Discussion: Two (2) A&E procurements were reviewed for this requirement and one (1) was found to be deficient due to a lack of documentation on negotiations conducted. There was no documentation on how the final blanket purchase order value was arrived at or any evidence of negotiations.

Best Practices: The use of serial negotiations to determine the contract price after the preferred technical choices have been made addresses the cost issue as secondary to the quality issues. The grantee must be careful to specify a realistic level of qualifications required to perform the work and then evaluate against those needs to avoid technical selection of over-qualified firms whose pricing may be difficult to adjust to the grantee's budget. Both procurement and technical staff must be knowledgeable in A&E procurement requirements.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Two (2) A & E procurements were reviewed for this requirement and one (1) was found deficient due to lack of documentation on negotiations conducted. There was no documentation on how the final blanket purchase order value was arrived at or any evidence of negotiations.

This contract was one of 8 awards issued from Request for Proposal No. 87659, and the original scoring documentation is located in the first contract, K30869, and is referred to in the contract file that the review found deficient. However, the value of the contract is noted on the Request for Proposal as a "not to exceed" amount, and in this case, that contract had a set value of $500,000.00. In addition, Metra did not negotiate the fixed hourly or burden rates prior to contract approval. The actual negotiation occurred at the time a "task" was assigned when estimated hours were included along with the hourly and burden rate.

Metra concurs and effective immediately the process has boon implemented for negotiating to establish the fixed hourly rates and burden rate done prior to any contract approval for all blanket fixed-fee typo A & E contracts.

Reviewing Contractor's Response: Metra's response to this deficiency is not adequate because it did not address how this deficiency will be corrected. All of the contracts issued from RFP No. 87659 should be amended. The history of contract costs and fee must be provided to FTA and evidence of contract changes must be provided to FTA. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

56. Clauses

Basic Requirement: Chapter IV, Section 2 and Appendix D of FTA C 4220.1F indicates that:

- A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement.
- Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement.

Discussion: Of the fifty-three (53) procurements reviewed for this requirement, twenty-three (23) were found to be deficient. The standard contract clauses used by Metra for purchases under the small purchase threshold and for professional services do not include the clauses required by FTA.

Best Practices: The Best Practices Procurement Manual discusses which Federal clauses are to be flowed down to sub-contractors and third parties. The flow-down requirements are applicable not only to contracts but to purchase orders as well. See Appendix L, Contract Clauses for an example of a contract clause listing. Purchase order forms that include these requirements should be put in place. Including all required clauses in every file would simplify contract preparation for all federally funded items. Current procedures do not list all the specific flow-down requirements and should be updated to do so, whether in an appendix or in the body of the procedure. Grantees should also provide training to all personnel who are involved in the procurement process (including sub-contractors) to ensure they are familiar with the requirements of the FTA Circular and Master Agreement.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The 23 deficient files lacking the appropriate FTA Clauses were identified against Metro's procurements under $10,000.

Metra concurs and will notify all bidders that Federal statutory and regulatory applicable requirements apply for all federally funded purchases. Additionally, required clauses will be maintained in the respective procurement file. This process will be in place within 30 days.

Reviewing Contractor's Response: Metra's response is not adequate because it did not address how the required clauses will be included in contracts for professional services. The corrective action must be revised to include the current and future inclusion of clauses in this type of contract. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

Buy America Requirements

The purchase for the utility trucks and cargo vans was reviewed for this requirement and was found to be deficient in both the pre-award review and post-delivery audit. FTA requires that the Buy America certifications be completed for vehicle procurements exceeding $100,000 even if they are not commonly regarded as rolling stock.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra is aware of Buy America requirements pertaining to Rolling Stock procurements and has completed "pre" and "post" Buy America audits for past rolling stock procurements.

Metra concurs that the procurement of rubber tire cargo vans should have been done in accordance with Buy America requirements. Staff is in the process of reviewing what is required for rubber tire vehicles and then they will perform the appropriate analysis and reviews.

Reviewing Contractor's Response: The requirement for pre-award and post-delivery audits does not apply to the purchase of non-revenue rolling stock; however, non-revenue rolling stock must comply with 49 C.F.R. Part 661. Metra has not provided documentation that the vehicles purchased, in fact, complied with applicable Buy America requirements. Metra must provide that documentation within 30 days of the date of the final report. Failure to provide this documentation may result in the non-participation of FTA in this procurement. Additionally, Metra must provide documentation that all other FTA-funded procurements completed for the years 2007-2011 for non-revenue rolling stock (including contracts P.O. K90086, P.O. K90128, and P.O. K90083) complied with 49 C.F.R. Part 661 within 30 days of the date of the final report. For future non-revenue rolling stock purchases, copies of revised procedures and processes; evidence of training; and independent audit reports validating the use of compliant procedures, must be provided to FTA within 30 days of the date of the final report.

VI. SUGGESTIONS FOR IMPROVING THE PROCUREMENT SYSTEM

The suggestions for improving the system are provided by the reviewing contractor to highlight practices that were observed during the PSR that, if not changed, could result in future deficiencies. These suggestions do not address FTA requirements, but point to under-performing or non-existent elements of the grantee's procurement system. Seventeen (17) improvements were suggested, as specified below:

1. Alter the RFP scoring process such that all evaluation committee members prepare individual scores and submit to procurement to roll-up for discussion. This will ensure transparency in the evaluation process.
2. The Board of Directors should approve all changes to the policy and procedure manual.
3. Improve file organization by implementing file tab checklists for procurement file documentation. This will ensure that all documentation is consistently maintained for each contract file.
4. Implement a process where the Board of Directors approves all contracts over a certain dollar threshold regardless of method of procurement.
5. Reduce allowable acceptance of gifts to a maximum amount of $25.
6. Improve procurement planning and documentation of planning activity.
7. Include CPFF and T&M contract administration guidelines in policies and procedures.
8. Final overhead rates should be determined within ninety (90) days from the end of each calendar year for all CPFF type contracts.
9. Revise Ordinance 94-1 to reflect current FTA terminology, for example, use of RFP and Sealed Bid rather than Competitive Bidding.
10. Review use of the term "retainer" to avoid misunderstanding of contract type.
11. Maintain a copy of the cost analysis completed by internal audit in the procurement file.
12. Include documentation of responsibility determination and EPLS check in procurement file in addition to the notation on the bid tab.
13. Evaluate the composition of evaluation committees to ensure that there is cross-functional representation.
14. Implement training on FTA requirements for all members of the Materials Management team.
15. When making significant changes to the requirements during the solicitation such as occurred in the procurement for elevator design and installation, Metra should cancel the original solicitation and rebid.
16. Revise the change order authorization form language to read that the change is either "in scope" or "out of scope" only.
17. When a single bid is received, include additional information about the market analysis conducted.

VII. APPENDIX ITEMS

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Appendix A: Deficient Contracts by Element

2	Contract Administration System	System-Wide Element				
5	System for Ensuring Most Efficient & Economic Purchase	System-Wide Element				
6	Procurement Policies & Procedures	System-Wide Element				
7	Independent Cost Estimates	Small Purchase	87251	$7,182.00	Western Remae Inc.	Acrylic Frames
		IFB	03725; MPA P0185	$580,000, NTE $2M	Century Contractors	Dump Truck Rental
		IFB	4747	$200,000.00	Asplundh Tree Expert Co.	On Track Tree Trimming
		IFB	92276	$100,000.00	Digital Imaging Resources	Printing/Reproduction Services
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
		RFP	84505	$250,000; C.O. $520K or $770K	Diamond Mgmt and Tech	Revenue Accounting Services
		Sole Source	90819	$12,811.00	AT&T	Relocation of Demarc
		Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services
12	Arbitrary Action	RFP	99686	$10,094,220.00	AST Corp.	Revenue Accounting System
		RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending
		RFP	44057	CO #1 for $119,480	Edwards and Kelsey	Design of 22 Union Pacific-North Line Bridge
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
13	Brand Name Restriction	Small Purchase	99792	$5,274.00	Dell Marketing	Laptop Computers
		Small Purchase	4249	$9,997.04	General Cable	Wire
		IFB	72235	$16,066,800.00	Progress Rail Services	Re-manufacture EMD F40 PH Locomotives; Rebid of Remanufacture of 50 EMD
		IFB	91582	$312.50 (line item from IFB)	Electrowire	Wire and Cable
		IFB	4747	$200,000.00	Asplundh Tree Expert Co.	On Track Tree Trimming
		IFB	87991	$171,338.00	Mainline Info Systems	IBM System Storage and Hardware
		IFB	90412	$32,099.98	Revere Electric Supply Co.	Temperature Control Kits
15	Contract Period of Performance	RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars

16	Written Procurement Selection Procedures	IFB	90271; MPA P0158	$70,000, NTE $2.5M	Century Contractors	Paving
		IFB	03725; MPA P0185	$580,000, NTE $2M	Century Contractors	Dump Truck Rental
		RFP	99771	$120,000.00	AT&T	Cisco Core Routers Installation
		RFP	86671	$1,574,424.21	Raul v. Bravo and Associates	Inspection Services for Locomotive Remanufacture
		RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
		RFP	2847	$3,579,474.48	IBM	Maintenance, Modification, and Warranty Tracking
18	Award to Responsible Contractor	IFB	99635	$39,174.00	Handi-Hut	Passenger Shelter
		IFB	90653	$4,958,500.00	Blinderman-Mecco-JV	Winnetka Station Construction
		IFB	90078	$1,943,502.00	Terry's Ford	Utility Trucks and Cargo Vans
		IFB	90271; MPA P0158	$70,000, NTE $2.5M	Century Contractors	Paving
		IFB	90297	$574,900.00	Chicagoland Paving Contractors	Pringree Rd. Station Parking Lost
		IFB	91582	$312.50 (line item from IFB)	Electrowire	Wire and Cable
		IFB	98511	$8,895,891.00	John Burns	Construction of New Commuter Rail Station at 35th Street
		IFB	85927	$5,698,000.00	FH Paschen, NS Nielson	75th and 79th Bridge Reconstruction
		IFB	2512	$66,895,000 (base contract)	Walsh Construction	Union Pacific RR/METRA North Line Bridges, Retaining Walls, Ravenswood Station
		IFB	90763, PO139	$31,500, NTE $2.5M	Engineered Plastics	Composite Deck Panels
		IFB	4747	$200,000.00	Asplundh Tree Expert Co.	On Track Tree Trimming
		IFB	90206	$1,130,011.50	Chicagoland Paving	Elburn Station Parking
		RFP	99686	$10,094,220.00	AST Corp.	Revenue Accounting System
		RFP	99771	$120,000.00	AT&T	Cisco Core Routers Installation
		RFP	86671	$1,574,424.21	Raul v. Bravo and Associates	Inspection Services for Locomotive Remanufacture
		RFP	4690	$896,733.46	Systems Development Integration	Email Migration Implementation
		RFP	42990	$2,589,528.26	Smith Engineering Consultants	Metro/Oswego and Other Design and Engineering Services
		RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending

18	Award to Responsible Contractor (cont.)	RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
		RFP	2847	$3,579,474.48	IBM	Maintenance, Modification, and Warranty Tracking
		Sole Source	91773	$329,783.58	Vapor Stone Rail Systems	Door Closures; Anti-Freeze Components
		Sole Source	90819	$12,811.00	AT&T	Relocation of Demarc
		Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services
19	Sound and Complete Agreement	RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
24	Complete Specification	Small Purchase	99792	$5,274.00	Dell Marketing	Laptop Computers
		IFB	90078	$1,943,502.00	Terry's Ford	Utility Trucks and Cargo Vans
		IFB	4747	$200,000.00	Asplundh Tree Expert Co.	On Track Tree Trimming
		RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services
25	Adequate Competition	IFB	2465	$1,372,308.00	Schindler Elevator Corp.	Elevators
		IFB	3282	$300,000; Proposal $632,774	Loram Rail Services	Rail Grinding Service
		IFB	87991	$171,338.00	Mainline Info Systems	IBM System Storage and Hardware
36	Evaluation (RFP)	RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
37	Price and Other Factors (RFP)	RFP	99686	$10,094,220.00	AST Corp.	Revenue Accounting System
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
38	Sole Source	Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services
39	Cost Analysis Required (Sole Source)	Sole Source	91773	$329,783.58	Vapor Stone Rail Systems	Door Closures; Anti-Freeze Components
		Sole Source	90819	$12,811.00	AT&T	Relocation of Demarc
		Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services

41	Cost or Price Analysis	Small Purchase	4583	$9,177.18	Fasteners Plus Inc.	Misc. Fasteners
		Small Purchase	3674	$6,335.00	Motion Savers, Inc.	Shelving
		Small Purchase	90220	$4,142.40	WS Hampshire Inc.	Electrical Insulation Molded Glass Mat
		Small Purchase	99792	$5,274.00	Dell Marketing	Laptop Computers
		Small Purchase	2028	$2,884.50	Kustom Seating Unlimited	Fiberglass Cloth
		Small Purchase	90831	$7,696.80	Revere Electric Supply	Ballasts, Lampholders and Co.
		Small Purchase	4249	$9,997.04	General Cable	Wire
		Small Purchase	98398	$9,885.00	Standby Power System Consultants	Removal/Installation of Battery Charger Back-up
		Small Purchase	91199	$2,500.00	GMI LLC	Wire and Cable
		Small Purchase	87251	$7,182.00	Western Remae Inc.	Acrylic Frames
		IFB	99635	$39,174.00	Handi-Hut	Passenger Shelter
		IFB	90653	$4,958,500.00	Blinderman-Mecco-JV	Winnetka Station Construction
		IFB	91082	$58,312.00	NW General Contractors Inc.	Lockport Station Construction
		IFB	2465	$1,372,308.00	Schindler Elevator Corp.	Elevators
		IFB	99364	$1,057,636.00	Westcode Inc.	Alc. And Motor Controls
		IFB	91767	$1,351,740.00	TTA	Overhaul of Bi-Level Coach Trucks
		IFB	90078	$1,943,502.00	Terry's Ford	Utility Trucks and Cargo Vans
		IFB	3858	$25,000.00	Netrix LLC	Network Communications Equipment
		IFB	3282	$300,000; Proposal $632,774	Loram Rail Services	Rail Grinding Service
		IFB	90271; MPA P0158	$70,000, NTE $2.5M	Century Contractors	Paving
		IFB	03725; MPA P0185	$580,000, NTE $2M	Century Contractors	Dump Truck Rental
		IFB	90170	$95,136.00	North America Video	Ethernet, Rack and Transceiver
		IFB	90297	$574,900.00	Chicagoland Paving Contractors	Pringree Rd. Station Parking Lost
		IFB	98932	$500,000.00	Illinois Constructor Corp.	Bridge Repair Services on Retainer Basis
		IFB	91232	$1,755,805.80	Freyssinet LLC	Elec. Dist. Brs. Repair 59th - 76th
		IFB	98511	$8,895,891.00	John Burns	Construction of New Commuter Rail Station at 35th Street
		IFB	85927	$5,698,000.00	FH Paschen, NS Nielson	75th and 79th Bridge Reconstruction
		IFB	2512	$66,895,000 (base contract)	Walsh Construction	Union Pacific RR/METRA North Line Bridges, Retaining Walls, Ravenswood Station
		IFB	90763, PO139	$31,500, NTE $2.5M	Engineered Plastics	Composite Deck Panels

41	Cost or Price Analysis (cont.)	IFB	4747	$200,000.00	Asplundh Tree Expert Co.	On Track Tree Trimming
		IFB	88004	$4,324,920.00	Passer American Corp.	Category Inspection and Maintenance
		IFB	91347	$564,000.00	John Burns Construction	Construction Services at Joliet Station
		IFB	87481	$26,148.00	Monogram Systems	Retention Toilets
		IFB	92276	$100,000.00	Digital Imaging Resources	Printing/Reproduction Services
		IFB	90206	$1,130,011.50	Chicagoland Paving	Elburn Station Parking
		RFP	99686	$10,094,220.00	AST Corp.	Revenue Accounting System
		RFP	99771	$120,000.00	AT&T	Cisco Core Routers Installation
		RFP	86671	$1,574,424.21	Raul v. Bravo and Associates	Inspection Services for Locomotive Remanufacture
		RFP	4690	$896,733.46	Systems Development Integration	Email Migration Implementation
		RFP	42990	$2,589,528.26	Smith Engineering Consultants	Metro/Oswego and Other Design and Engineering Services
		RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
		RFP	84505	$250,000; C.O. $520K or $770K	Diamond Mgmt and Tech	Revenue Accounting Services
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
42	Written Record of Procurement History	Small Purchase	4249	$9,997.04	General Cable	Wire
		Small Purchase	98398	$9,885.00	Standby Power System Consultants	Removal/Installation of Battery Charger Back-up
		IFB	91767	$1,351,740.00	TTA	Overhaul of Bi-Level Coach Trucks
		IFB	3282	$300,000; Proposal $632,774	Loram Rail Services	Rail Grinding Service
		IFB	90271; MPA P0158	$70,000, NTE $2.5M	Century Contractors	Paving
		IFB	03725; MPA P0185	$580,000, NTE $2M	Century Contractors	Dump Truck Rental
		IFB	98932	$500,000.00	Illinois Constructor Corp.	Bridge Repair Services on Retainer Basis
		RFP	99686	$10,094,220.00	AST Corp.	Revenue Accounting System
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services

42	Written Record of Procurement History (cont.)	RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
		Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services
44	Out of Scope Changes	IFB	84763	$276,000.00	John Burns Construction	ADA Station Upgrade
		RFP	99771	$120,000.00	AT&T	Cisco Core Routers Installation
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending
46	Progress Payments	IFB	90653	$4,958,500.00	Blinderman-Mecco-JV	Winnetka Station Construction
		IFB	91082	$58,312.00	NW General Contractors Inc.	Lockput Station Construction
		IFB	2465	$1,372,308.00	Schindler Elevator Corp.	Elevators
		IFB	90297	$574,900.00	Chicagoland Paving Contractors	Pringree Rd. Station Parking Lost
		IFB	98932	$500,000.00	Illinois Constructor Corp.	Bridge Repair Services on Retainer Basis
		IFB	98511	$8,895,891.00	John Burns	Construction of New Commuter Rail Station at 35th Street
		IFB	2512	$66,895,000 (base contract)	Walsh Construction	Union Pacific RR/METRA North Line Bridges, Retaining Walls, Ravenswood Station
		IFB	91347	$564,000.00	John Burns Construction	Construction Services at Joliet Station
		IFB	90206	$1,130,011.50	Chicagoland Paving	Elburn Station Parking
48	Cost Plus Percentage of Cost	RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
52	Serial Price Negotiation (A&E)	RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services ✓
56	Clauses	Small Purchase	4583	$9,177.18	Fasteners Plus Inc.	Misc. Fasteners
		Small Purchase	3674	$6,335.00	Motion Savers Inc.	Shelving
		Small Purchase	90220	$4,142.40	WS Hampshire Inc.	Electrical Insulation Molded Glass Mat
		Small Purchase	99792	$5,274.00	Dell Marketing	Laptop Computers
		Small Purchase	2028	$2,884.50	Kustom Seating Unlimited	Fiberglass Cloth
		Small Purchase	90831	$7,696.80	Revere Electric Supply	Ballasts, Lampholders and Co.
		Small Purchase	4249	$9,997.04	General Cable	Wire
		Small Purchase	98398	$9,885.00	Standby Power System Consultants	Removal/Installation of Battery Charger Back-up
		Small Purchase	91199	$2,500.00	GMI LLC	Wire and Cable
		Small Purchase	87251	$7,182.00	Western Remae Inc.	Acrylic Frames
		IFB	91582	$312.50 (line item from IFB)	Electrowire	Wire and Cable (See K91199) was there
		RFP	99686	$10,094,220.00	AST Corp.	Revenue Accounting System

S6	Clauses (cont.)	RFP	99771	$120,000.00	AT&T	Cisco Core Routers Installation
		RFP	4690	$896,733.46	Systems Development Integration	Email Migration Implementation
		RFP	42990	$2,589,528.26	Smith Engineering Consultants	Metro/Oswego and Other Design and Engineering Services
		RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
		Sole Source	90819	$12,811.00	AT&T	Relocation of Demarc
		Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services
	Buy America Pre and Post Award	IFB	90078	$1,943,502.00	Terry's Ford	Utility Trucks and Cargo Vans

Appendix B: Deficiencies by Contract

Small Purchase

91199 GMI LLC, Wire and Cable, $2,500.00

- Clauses
- Cost or Price Analysis

2028 Kustom Seating Unlimited, Fiberglass Cloth, $2,884.50

- Clauses
- Cost or Price Analysis

90220 WS Hampshire Inc., Electrical Insulation Molded Glass Mat, $4,142.40

- Clauses
- Cost or Price Analysis

99792 Dell Marketing, Laptop Computers, $5,274.00

- Brand Name Restriction
- Clauses
- Complete Specification
- Cost or Price Analysis

3674 Motion Savers Inc., Shelving, $6335.00

- Clauses
- Cost or Price Analysis

87251 Western Remae Inc., Acrylic Frames, $7182.00

- Clauses
- Cost or Price Analysis
- Independent Cost Estimate

90831 Revere Electric Supply, Ballasts, Lamp Holders, and Co., $7,969.80

- Clauses
- Cost or Price Analysis

4583 Fasteners Plus Inc., Misc. Fasteners, $9,177.18

- Clauses
- Cost or Price Analysis

98398 Standby Power System Consultants, Removal/Installation of Battery Charger Back-Up, $9885.00

- Clauses
- Cost or Price Analysis
- Written Record of Procurement History

4249 General Cable, Wire, $9,997.04

- Brand Name Restriction
- Clauses
- Cost or Price Analysis
- Written Record of Procurement History

IFB

91582 Electrowire, Wire and Cable, $312.50 (Line item from IFB)

- Award to Responsible Contractor
- Brand Name Restriction
- Clauses

3858 Netrix LLC, Network Communications Equipment, $25,000.00

- Cost or Price Analysis

87481 Monogram Systems, Retention Toilets, $26,148.00

- Cost or Price Analysis

90412 Revere Electric Supply Co., Temperature Control Kits, $32,099.98

- Brand Name Restriction

99635 Handi-Hut, Passenger Shelter, $39,174.00

- Award to Responsible Contractor
- Cost or Price Analysis

91082 NW General Contractors Inc., Lockput Station Construction, $58,312.00

- Cost or Price Analysis
- Progress Payments

90170 North America Video, Ethernet Rack and Transceiver, $95,136.00

- Cost or Price Analysis

92276 Digital Imaging Resources, Printing/Reproduction Services, $100,000.00

- Cost or Price Analysis
- Independent Cost Estimate

87991 Mainline Info Systems, IBM System Storage and Hardware, $171,338.00

- Adequate Competition
- Brand Name Restriction

4747 Asplundh Tree Expert Co., On Track Tree Trimming, $200,000.00

- Award to Responsible Contractor
- Brand Name Restriction
- Complete Specification
- Cost or Price Analysis
- Independent Cost Estimate

84763 John Burns Construction, ADA Station Upgrade, $276,000.00

- Out of Scope Change

3282 Loram Rail Services, Rail Grinding Service, $300,000 (proposal $632,774)

- Adequate Competition
- Cost or Price Analysis
- Written Record of Procurement History

98932 Illinois Constructor Corp., Bridge Repair Services on Retainer Basis, $500,000.00

- Cost or Price Analysis
- Progress Payments
- Written Record of Procurement History

91347 John Burns Construction, Construction Services at Joliet Station, $564,000.00

- Cost or Price Analysis
- Progress Payments

90297 Chicagoland Paving Contractors, Pringree Rd. Station Parking Lot, $574,900.00

- Award to Responsible Contractor
- Cost or Price Analysis
- Progress Payments

99364 Westcode Inc., Alc. And Motor Controls, $1,057,636.00

- Cost or Price Analysis

90206 Chicagoland Paving, Elburn Station Parking, $1,130,011.50

- Award to Responsible Contractor
- Cost or Price Analysis
- Progress Payments

91767 TTA, Overhaul of Bi-Level Coach Trucks, $1,351,740.00

- Cost or Price Analysis
- Written Record of Procurement History

2465 Schindler Elevator Corp., Elevators, $1,372,308.00

- Adequate Competition
- Cost or Price Analysis
- Progress Payments

91232 Freyssinct LLC, Elec. Dist. Brs. Repair 59th – 76th, $1,755,805.80

- Cost or Price Analysis

90078 Terry's Ford, Utility Trucks and Cargo Vans, $1,943,502.00

- Award to Responsible Contractor
- Buy America Pre and Post Award Certifications
- Complete Specification
- Cost or Price Analysis

3725 (MPA PO 185) Century Contractors, Dump Truck Rental, NTE $2,000,000.00 ($580,000.00)

- Cost or Price Analysis
- Independent Cost Estimate
- Written Procurement Selection Procedures
- Written Record of Procurement History

90763 (PO 139) Engineered Plastics, Composite Deck Panels, NTE $2,500,000.00 ($31,500)

- Award to Responsible Contractor
- Cost or Price Analysis

90271 (MPA PO 158) Century Contractors, Paving, NTE $2,500,000.00 ($70,000.00)

- Award to Responsible Contractor
- Cost or Price Analysis
- Written Procurement Selection Procedures
- Written Record of Procurement History

88004 Passer American Corp., Category Inspection and Maintenance, $4,324,920.00

- Cost or Price Analysis

90653 Blindermann-Mecco JV, Winnetka Station Construction, $4,958,500.00

- Award to Responsible Contractor
- Cost or Price Analysis
- Progress Payments

85927 FH Paschen, NS Nielson, 75th and 79th Bridge Reconstruction, $5,698,000.00

- Award to Responsible Contractor
- Cost or Price Analysis

98511 John Burns Construction, Construction of New Commuter Rail Station at 35th Street, $8,895,891.00

- Award to Responsible Contractor
- Cost or Price Analysis
- Progress Payments

72235 Progress Rail Services, Remanufacture EMD F40PH Locomotives; Rebid of Remanufacture of 50 EMD, $16,066,800.00

- Brand Name Restriction

2512 Walsh Construction, Union Pacific RR/METRA North Line Bridges, Retaining Walls, Ravenswood Station, $66,895,000.00 (base contract)

- Award to Responsible Contractor
- Cost or Price Analysis
- Progress Payments

RFP

44057 Edwards and Kelcey, Design of 22 Union Pacific-North Line Bridges, $119,480 (CO#1)

- Arbitrary Action

99771 AT&T, Cisco Core Routers Installation, $120,000.00

- Award to Responsible Contractor
- Clauses
- Cost or Price Analysis
- Out of Scope Changes
- Written Procurement Selection Procedures

84505 Diamond Mgmt and Tech, Revenue Accounting Services, $250,000 (base); $520,000 or $770,000 (change orders)

- Cost or Price Analysis
- Independent Cost Estimates

91240 LTK Engineering Services, Blanket Signal Engineering Services, $750,000.00

- Award to Responsible Contractor
- Clauses
- Independent Cost Estimate
- Price and Other Factors [RFP]
- Serial Price Negotiation [A&E]
- Sound and Complete Agreement
- Written Procurement Selection Procedures
- Written Record of Procurement History

4690 Systems Development Integration, Email Migration Implementation, $896,733.46

- Award to Responsible Contractor
- Clauses
- Cost or Price Analysis

86671 Raul V. Bravo and Associates, Inspection Services for Locomotive Remanufacture, $1,574,424.21

- Award to Responsible Contractor
- Cost or Price Analysis
- Written Procurement Selection Procedures

86876 Engineering and Mgmt Specialists Inc., QA Oversight and General Program Support, $2,128,331.00

- Arbitrary Action
- Award to Responsible Contractor
- Clauses
- Complete Specification
- Cost or Price Analysis
- Evaluation [RFP]
- Written Procurement Selection Procedures

91048 AECOM, Construction Management Services, $2,500,000.00

- Award to Responsible Contractor
- Clauses
- Complete Specification

- Cost or Price Analysis
- Cost Plus Percentage of Cost
- Independent Cost Estimate
- Price and Other Factors [RFP]
- Written Record of Procurement History

42990 Smith Engineering Consultants, Metro/Oswego and Other Design and Engineering Services, $2,589,528.26

- Award to Responsible Contractor
- Clauses
- Cost or Price Analysis

2847 IBM, Maintenance, Modification, and Warranty Tracking, $3,579.474.48

- Award to Responsible Contractor
- Written Procurement Selection Procedures

90926 Nippon Sharyo, MFG Engineering in Rehab of 176 Bi-Level Passenger Railcars, $5,995,673.00

- Arbitrary Action
- Award to Responsible Contractor
- Clauses
- Contract Period of Performance
- Cost or Price Analysis
- Evaluation [RFP]
- Sound and Complete Agreement
- Written Procurement Selection Procedures
- Written Record of Procurement History

91049 V3 Companies of Illinois Ltd, Blanket Agreement, $8,400,000.00

- Award to Responsible Contractor
- Clauses
- Complete Specification
- Cost or Price Analysis
- Cost Plus Percentage of Cost
- Evaluation [RFP]
- Independent Cost Estimate
- Price and Other Factors [RFP]
- Written Procurement Selection Procedures
- Written Record of Procurement History

99686 AST Corp., Revenue Accounting System, $10,094,220.00

- Arbitrary Action
- Award to Responsible Contractor
- Clauses
- Cost or Price Analysis
- Price and Other Factors [RFP]
- Written Record of Procurement History

90657 GFI Genfare, Ticket Vending, Award Amount Not Noted

- Arbitrary Action
- Award to Responsible Contractor
- Clauses
- Cost or Price Analysis
- Cost Plus Percentage of Cost
- Out of Scope Change
- Written Record of Procurement History

Sole Source

90819 AT&T, Relocation of Demarc, $12,811.00

- Award to Responsible Contractor
- Clauses
- Cost Analysis Required [Sole Source]
- Independent Cost Estimate

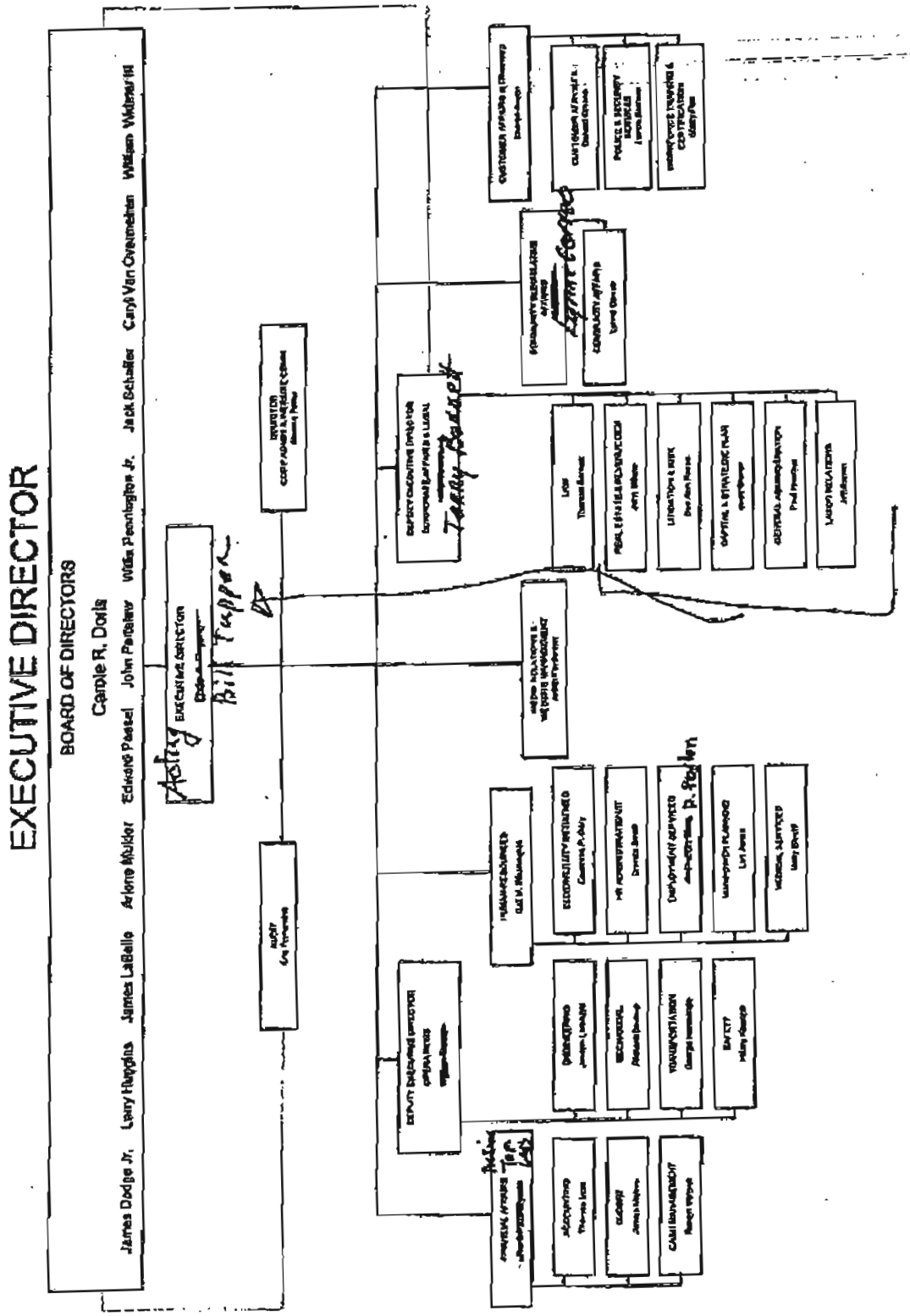
2912 Mercury Associates Inc., Fleet Mgmt Consulting Services, $46,585.00

- Award to Responsible Contractor
- Clauses
- Complete Specification
- Cost Analysis Required [Sole Source]
- Independent Cost Estimate
- Sole Source if Other Award is Infeasible
- Written Record of Procurement History

91773 Vapor Stone Rail Systems, Door Closures; Anti-Freeze Components, $329,783.58

- Award to Responsible Contractor
- Cost Analysis Required [Sole Source]

Appendix C: Organization Chart



December 3, 2009

Appendix D: Pre-Bid Independent Cost Estimate

Contract Type: *Date of Estimate:*

Description of Goods / Service:

Method of Obtaining the Estimate:
I have obtained the following estimate from....

- ○ Published Price List / Past pricing (date)_____
- ○ Engineering or technical estimate
- ○ Independent Third Party estimate
- ○ Other (specify)_____

Cost Estimate Details:
Through the method stated above it has been determined that the total cost of the goods/services is expected to be: $_____. Details are shown below.

Cost of Standard Items

US Dollars

A

Product	Cost ($/ea) Delivered	Cost ($/ea) No Freight	Notes / Data Source

Cost of Services, Repairs, or Non-Standard Items

B

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

Signature of Preparer:
The preceding cost estimate was obtained or prepared by:

_____

[For complex items or tasks, attach detailed spreadsheet(s) explaining rationale.]

Appendix E: Responsibility Determination Form

Bid/RFP No: _____

Supplier: _____

Date: _____

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

	Acceptable	Comment
1. Appropriate financial, equipment, facility, and personnel	☐ Yes ☐ No	_____
2. Ability to meet the delivery schedule	☐ Yes ☐ No	_____
3. Satisfactory period of performance	☐ Yes ☐ No	_____
4. Satisfactory record of integrity, not on declined or suspended listings	☐ Yes ☐ No	_____
5. Receipt of all necessary data from supplier	☐ Yes ☐ No	_____

Appendix F: Single Source Analysis

(Complete this form when Metra receives only one bid in response to an IFB or RFP)

Solicitation: _____	Action to Plan:
Product/Service to be Procured: _____	☐ Award Contract Basis: _____ _____ _____
Bid or Proposal Due Date: _____	☐ Extend Deadline (modify solicitation): New Due Date: _____
Number of Solicitations Requested: _____	Reprocure: New Solicitation Due to be Completed: _____
Number of Bids Received: _____	Projected Due Date: _____
Reasons for Lack of Competition (based on Supplier Contracts)	Signed: _____
Lack competency	Title: _____
Lack available resources	Date: _____
Poor timing	
Short response due date	
Other: _____	

Appendix G: Non-Competitive Procurement Justification

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

Check one:

_____ The item is available only from a single source (sole source justification is attached).

_____ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).

_____ FTA authorizes noncompetitive negotiations (letter of authorization is attached).

_____ After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).

_____ The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

Comments:

_____

_____

_____

_____ Independent Estimate and Cost Analysis are attached.

_____	_____
Purchasing Agent	Senior Manager
_____	_____
Date	Date

Appendix H: Cost Analysis Form

PAGE	OF	PGS

COST ANALYSIS SUMMARY (For New Contracts Including Letter Contracts)
(See Instructions below)

SOLICITATION #	SUPPLIES AND/OR SERVICES TO BE FURNISHED
PREPARER'S NAME, DEPARTMENT, TITLE, PHONE	
DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED	APPROVAL SIGNATURE

DETAIL DESCRIPTION OF COST ELEMENTS

2. DIRECT MATERIAL	Vendor A Proposal	Vendor B Proposal	Independent Estimate	Analysis
A. PURCHASED PARTS				
B. SUBCONTRACTED ITEMS				
C. OTHER - (1) RAW MATERIAL				
(2) STANDARD COMMERCIAL ITEMS				
TOTAL DIRECT MATERIAL				
2. MATERIAL OVERHEAD (RATE % x $ BASE *)				

3. DIRECT LABOR	ESTIMATED HOURS	RATE/ HOUR	Vendor A ($)	Vendor B ($)	Independent Estimate	Variance
TOTAL DIRECT LABOR						

4. LABOR OVERHEAD		Vendor A $)	Vendor B $)	Independent Estimate	Variance
OH Rate					
X BASE (labor total above)					
TOTAL LABOR OVERHEAD					

5. OTHER DIRECT COSTS	Vendor A ($)	Vendor B ($)	Independent Estimate	Variance
A. SPECIAL TOOLING/EQUIPMENT				
TOTAL SPECIAL TOOLING/EQUIPMENT				
B. TRAVEL				
(1) TRANSPORTATION				
(2) PER DIEM OR SUBSISTENCE				
TOTAL TRAVEL				

DETAIL DESCRIPTION OF COST ELEMENTS (continued)	Vendor A ($)	Vendor B ($)	Independent Estimate	Variance
C. INDIVIDUAL CONSULTANT SERVICES				
TOTAL INDIVIDUAL CONSULTANT SERVICES				
D. OTHER				
TOTAL OTHER				
E. SUBTOTAL DIRECT COST AND OVERHEAD				
6. GENERAL AND ADMINISTRATIVE (G&A) RATE %				
X $ BASE (Use 5.E above)				
7. ROYALTIES (If any)				
8. SUBTOTAL ESTIMATED COST				
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY				
10. SUBTOTAL ESTIMATED COST				
11. FEE OR PROFIT				
12. TOTAL ESTIMATED COST AND FEE OR PROFIT				
13. Discounts				
14. Option Costs (specify)				
15. ADJUSTED COST				

ANALYSIS GUIDELINES

1. DIRECT MATERIAL

A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.).

B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors

C. Other:

(1) Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.

(2) Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

2. MATERIAL OVERHEAD

Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (item 6).

3. DIRECT LABOR

Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used . If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

4. LABOR OVERHEAD

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available,

5. OTHER DIRECT COSTS

A. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.

B. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip. Compare and check costs.

C. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.

D. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.

6. GENERAL AND ADMINISTRATIVE EXPENSE

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

7. ROYALTIES

If more than $250, analyze the following information for each separate royalty or license fee; name and address of licenser; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties,

8. SUBTOTAL ESTIMATED COST

Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY

Analyze the offerors' supporting calculations and compare to known standards.

10. SUBTOTAL ESTIMATED COST

This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.

11. FEE OR PROFIT

Review the total of all proposed Fees or Profit. Remember that the FTA prohibits cost plus percentage of cost contracting, and caps A&E profits at 10%.

12. TOTAL ESTIMATED COST AND FEE OR PROFIT

Analyze the range of total estimated costs including Fee or Profit, and explain variance to independent estimate. Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.

13. DISCOUNTS

Review basis for Discounts and range between offers.

ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE.

Appendix I: Price Analysis

PO / Contract: _____

The evidence compiled by a price analysis includes:

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

DATE:_____ PREPARED BY: _____

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

____ Comparison with competing suppliers' prices or catalog pricing for the same item. (Complete comparison matrix and attach supporting quotes or catalog pages.)

____ Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)

____ Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record).

____ Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

SUMMARY MATRIX

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

Attachments:

Appendix J: Contract/Purchase Order File Index

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

Section A - SOLICITATION DOCUMENTS		
Tab No.	Document(s)	Audited By
1	Purchase Request	
2	Specifications & DBE Goals	
3	Requirement Justification	
4	Independent Cost Estimate	
5	Bidder's List	
6	Justification of Procurement Method	
7	Copy of IFB	
8	Proof of Publication	
9	IFB Attachments/Modifications	
10	Pre-Bid Minutes & List of Attendees	
11	Correspondence with Bidders	
12	Protests Prior to Bid Opening	
13	Interoffice Correspondence	
14	Review for Responsiveness	

1. Contract No._____
2. Contract Administrator_____
3. Date_____

Appendix J (continued)

Contract/Purchase Order File Index

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

Section B - AWARD DOCUMENTS		
Tab No.	**Document(s)**	**Audited By**
1	Rationale for Method of Procurement Copy of Each Bid	
2	Late Bids – Bid Errors	
3	Bid Analysis/Tabulation Sheet	
4	Technical Evaluation and Pre-Award Survey	
5	Affirmative Action Evaluation/DBE Plan	
6	Bidder Responsibility Determination	
7	Price Analysis	
8	Record of Negotiation for Single Bid (If Applicable	
9	Justification of Contract Type	
10	Award Recommendation Memo	
11	Board Resolution	
12	Notice of Award	
13	Notice to Unsuccessful Bidders (Bond, Check Returns)	
14	FTA Approval	
15	Legal Review of Contract Documents	
16	Contract Document (Drawings not required)	
17	Bond & Certificates of Insurance	
18	Notice to Proceed	
19	Purchase Order (IF applicable)	

Appendix J (continued)

Contract/Purchase Order File Index

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

Section C – CONTRACT ADMINISTRATION DOCUMENTS		
Tab No.	Document(s)	Audited By
1	Post Award Conference	
2	Status Reports	
3	Change Notices/Modifications/Change Orders	
4	Site Visit Reports	
5	Progress Meeting Minutes	
6	Quality Assurance Records	
7	Termination/Stop Work Notices or Resolution Plan	
8	Invoices and Check Requests	
9	Records of Payment	
10	Advance or Progress Payments	
11	Notice of Substantial Acceptance	
12	Punch List Discrepancies	
13	Notice of Final Acceptance	
14	Notice of Claims	
15	Release of Claims/Bonds	
16	Assignments	
17	Notice of Final Payment	
18	Audit Reports	
19	Liquidated Damages	
20	Close Out Documentation	

Appendix J (continued)

Contract/Purchase Order File Index

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

Section A - SOLICITATION DOCUMENTS		
Tab No.	**Document(s)**	**Audited By**
1	Purchase Request Rationale for Method of Procurement	
2	Specifications/Statement of Work	
3	Justification for Procurement	
4	Cost Estimate	
5	Set Aside Decision/DBE Goal	
6	Justification of Procurement Method	
7	List of Prospective Proposers	
8	Proof of Publication	
9	Copy of RFP	
10	Addenda	
11	Pre-Proposal Minutes & List of Attendees	
12	Correspondence with Bidders	
13	Interoffice Correspondence	
14	Review for Responsiveness	

Contract No._____ Contract Administrator_____

Date_____

Appendix J (continued)

Contract/Purchase Order File Index

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

Section B - AWARD DOCUMENTS		
Tab No.	Document(s)	Audited By
1	Copy of Each Proposal	
2	Proposal Tabulation Sheet	
3	Evaluation Team Notification	
4	Evaluation Sheet/Matrix	
5	Pre-Award Survey	
6	Determination of Competitive Zone	
7	Invitation for Oral Interviews	
8	Notice of Rejection	
9	Minutes of Discussions	
10	Correspondence with Proposers	
11	Cost or Price Analysis	
12	Justification for Contract Type	
13	Negotiation Memorandum	
14	Copy of Each Best and Final Offer	
15	Award Recommendation Memo	
16	Board Resolution	
17	Legal Review of Contract Documents	
18	Notice of Award	
19	Notice to Unsuccessful Proposers	
20	Procurement Summary	
21	Determination and Findings	
22	Bonds	
23	Certificates of Insurance	
24	Contract Document (Drawings not required)	
25	Notice to Proceed	
26	Purchase Order	

Appendix J (continued)

Contract/Purchase Order File Index

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

Section C – CONTRACT ADMINISTRATION DOCUMENTS		
Tab No.	**Document(s)**	**Audited by**
1	Post Award Conference	
2	Quality Assurance Records	
3	Change Notices/Modifications/Change Orders	
4	Periodic Status Reports	
5	Contractor Evaluation Form	
6	Site Visit Reports	
7	Termination/Stop Work Notices or Resolution Plan	
8	Invoices and Check Requests	
9	Records of Payment and Receipts	
10	Advance or Progress Payments Documents	
11	Notice of Substantial Acceptance	
12	Punch List Discrepancies	
13	Notice of Final Acceptance	
14	Notice of Claims	
15	Release of Claims/Bonds	
16	Assignments	
17	Notice of Final Payment	
18	Audit Reports	
19	Liquidated Damages	
20	Close Out Documentation	

Appendix K: Change Order Review Checklist

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

Change Order Checklist	Category			Comment
	ND	D	N/A	
1. In-House Estimate Prepared				
2. Project Manager Approval				
3. AWO Scope Meeting Held				
3a. Scope of Change Adequate for Bidding				
4. Contractor Proposal Includes Impact Costs, Price				
5. Cost Analysis Conducted				
5a. If Price>10% of ICE, Evidence of MTA President Approval				
6. Negotiation Memorandum				
7. Written Record of Change				
7a. Signed Change Order in File				
8. Evidence of Board Approval Prior Initiation of Changed Work				
9. Notice to Proceed in File				
10. Work Authorized within Contract Scope				
11. No Evidence of Arbitrary Action				

Other Comment

Appendix L: Contract Clauses

APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding $2,000)

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, EEO, ADA)	>$10,000	>$10,000	>$10,000	>$10,000	>$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>$25,000	>$25,000	>$25,000	>$25,000	>$25,000
Buy America			>$100,000	>$100,000	>$100,000
Resolution of Disputes, Breaches, or Other Litigation	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Lobbying	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Clean Air	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Clean Water	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Cargo Preference			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.
Fly America	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
Davis-Bacon Act				>$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		>$100,000 (except transportation services)	>$100,000	>$100,000 (including ferry vessels)	
Copeland Anti-Kickback Act Section 1 Section 2				All All exceeding $2,000 (including ferry vessels)	
Bonding				$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring $10,000 or more per year		Contracts for items designated by EPA, when procuring $10,000 or more per year	Contracts for items designated by EPA, when procuring $10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

Appendix M: Metra's Response

547 W. Jackson Blvd. Chicago, Illinois 60661 Telephone: (312) 322-6900 TTY# 1-312-322-6774

March 29, 2011

Mr. Dominick J. Gatto P.E.
Director, Office of Program Management and Oversight
Federal Transit Administration
Region V
200 West Adams Street, Suite 320
Chicago, Illinois 60606

Re: FY 2011 Procurement System Review
Draft Report

Dear Mr. Gatto:

The attached memorandum from Mr. Fred Smalarz, Senior Director for Materials Management provides Metra's response to the FY 2011 Procurement System Review Draft Report. We specifically focused our comments on the reviewed elements found to be deficient. While our examination of specific reviewed contracts and processes did not always produce perfect agreement with the review's findings, we generally cannot disagree with the best practice-based improvements offered as corrective actions.

The attached memo outlines our corrective action plan and timeframe for implementing each improvement. Our response indicates what specific improvements are needed in each element area and estimates how long it should take to implement those improvements. Certain changes can occur immediately while others may take up to 90 days. Also attached is documentation of contract file organization improvements that have recently been implemented, and copies of sole source evaluations related to Element 39. Finally, the memo states Metra's commitment to improving our overall Procurement process through staff training and providing ongoing oversight of Procurement processes to ensure that the implemented improvements are being adopted.

Sincerely,

David F. Simmons
Department Head
Capital Grants

Attachs.

cc: P. Kisielius F. Smalarz L. Ciavarella E. Fernandes

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Metra℠

Memorandum

Date: March 24, 2011

To: Dave Simmons, Department Head
Capital Grants

From: F.E. Smalarz, C.P.M., Senior Director
Materials Management

Subject: Procurement System Review
Draft Report Response - Revised

Metra embraces the opportunity and is committed to altering and implementing actions to improve and strengthen our procurement process. Staff is also committed to educating and upgrading the working knowledge of the Procurement staff and instituting oversight that provides feedback to the continuing process for improvement. Additionally, we are committed to providing comprehensive training to Procurement staff and to providing ongoing review of the procurement process as part of Metra's internal audit plans. Besides "hands-on" training, Metra will seek additional sources of training for staff through the Institute for Supply Management and courses provided by the National Transit Institute that are FTA sponsored.

Metra has reviewed the "Draft Report" of the Procurement System Review, and we present the following comments for each outstanding element. Additionally, for each respective element, we indicate whether Metra has already acted upon the recommendation or the length of time it will require to be implemented. If there is no time period indicated the action will be implemented within 30 days from the date of this letter.

<u>Element 2 – Contract Administration System</u>

Metra believes that a Contract Administration System is in place and that addressing the noted deficiencies within this Element No. 2, as Metra indicates it will do below, will ensure improved management of contractor performance.

Areas that were noted with deficiencies are; the contract type is not clear, there is apparent arbitrary action, and A & E type contracts lack review of overhead rates as

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part of the evaluation process. These are addressed and a corresponding course of action is provided in the following listed Deficient Elements.

Metra has a process in place to review the overhead rates on "cost plus fixed fee" contracts that require every contractor to submit the latest Illinois Department of Transportation (IDOT) provisionally approved or audited overhead rates. These rates are closely monitored against the Metra approved rates by the user departments to ensure consistency in the application. The contracts that do not have the approved Illinois Department of Transportation or audited rates are reviewed based on risk factors, and appropriate adjustments are made to the final contractor billings.

The implementation of time and material contracts and negotiating the overhead rates in the beginning as recommended by the FTA in this review would eliminate the issue of final overhead rate adjustments in the future. Element No. 19 further addresses Metra's course of action.

Element 5 – System for Ensuring Most Efficient and Economic Purchase

Metra's budgets are developed with planned and analyzed material or service requirements. Metra develops requirements utilizing past, current and anticipated future needs. The reviewed files were blanket purchase orders that were released off Master Purchase Agreements (MPA). The MPA was publicly bid and had a purchase requisition, complete with an independent cost analysis. The blanket purchase orders were then released by project as funding became available.

Going forward, Metra will include in the contract file the evidence/basis for the developed/planned procurement.

Element 6 – Procurement Policies and Procedures

The review indicated that Metra is complying with FTA requirements as is provided in Metra's solicitation boilerplate.

Metra will include the FTA requirements in our policies and procedures. Estimated 90 days to complete.

Element 7 – Independent Cost Estimates

As part of Metra's Pre-Award Activity, and listed on Metra's Checklist is, "Receiving an Independent Cost Estimate of Contract/Purchase Order Valuation." Metra uses this checklist as part of our contract file administration.

Going forward emphasis will be placed upon the appropriate staff to improve supplying adequate supporting documentation.

Element 12 – Arbitrary Action

The five (5) procurements that were identified as deficient all received multiple bids or proposals, and the respective contract files did contain information about the process that was used for each solicitation.

Metra will ensure that the procurement process will be consistent and will use proper file documentation to avoid arbitrary action. It will consist of proposal tabulation sheet(s) for RFP's and bid tabulation sheet(s) for IFB's. In addition, all award decision making documentation will consist of scoring sheet(s) and negotiation documentation, if required, for all RFP's and technical evaluation for IFB's. See Element No. 42 for additional detail to contract file content and organization.

Element 13 – Brand Name Restrictions

Of the fifty-one (51) procurements reviewed, forty-three (43) were found to be not applicable, one (1) was found to be not deficient, and seven (7) were found deficient. Please note that the FTA/IDOT Addendum for Material Procurements., Page 1, Item No. 3 states: "Approved Equals and Brand Names. Where a feature, component, or item is specified by brand name in the Specifications, the words 'or Approved Equal' are implied. All approvals and request for approvals of proposed Approved Equals must be in writing. Specification by brand name of components or equipment in the Specification shall not relieve Contractor from its responsibility to design and construct the Equipment and perform the work in accordance with the general performance requirements of the Specifications and these General Provisions."

The seven (7) procurements deemed deficient included a statement that equals may be offered by suppliers; however, the salient characteristics were not noted. The Materials Management Department will return purchase requisitions to the requisitioning departments when they do not list the salient characteristics. Following the FTA review this process was immediately implemented and being followed by staff.

Element 15- Contract Term Limitations – Rolling Stock

There was a single contract found to be deficient regarding this Element. It was a six (6) year contract for the "Kitting" of material purchased by Metra and delivered to the contractor for design & engineering of each kit, i.e., the contractor designed and engineered each kit for Metra. Metra then competitively bid out all material for the kits needed for the car rehab program(s). Metra estimated the duration for kitting the

car rehab material to last six (6) years.

Metra will modify the subject contract to conform within the five (5) year period.

Element 16- Written Procurement Selection Procedures

The deficient files refer to Metra's RFP evaluation process. Metra does have established evaluation processes. As noted in the review, proposals are re-scored after interviews. The review noted that this particular aspect of the process is not made apparent or clear to proposers.

Following the FTA review, staff immediately included in all RFP Evaluation Processes that if interviews are to be conducted, the proposer presentation may be re-scored.

Element 18 – Award to Responsible Contractors

As noted in the review, Metra does have a standard checklist process in place on the bid tabulation form regarding the prospective contractor's responsibility and the Federal excluded parties list. The review noted deficiencies in informal procurements. Prior to this review all bid tabulation sheets for formal bids (over $10,000.00) were properly filled out, including debarment.

Following the FTA review and effective immediately, all bid tabulation sheets for formal and informal bids (under $10,000.00) will be checked and initiated by the buyer for responsibility and the Federal excluded parties list. This process is in place and being used by the appropriate staff.

Element 19 – Sound and Complete Agreement

Two (2) contracts were found to be deficient. In both cases the contract documents do not clearly indicate the contract type.

The contract for the blanket Signal Engineering Services is a "not to exceed $500,000.00" contract. The contract specified "total actual costs and fixed fee." Exhibit 5 in the contract is the Employee Compensation Schedule, listing the hourly rates for the contractor's staff, audited rate of 147.5%, and a profit rate of 10%. The file contains supporting documentation for the cost of task assignments. Metra's standard 4400 Cost Form indicates that the costs match the rates and fees listed on Exhibit 5.

The file for the Material Kitting & Manufacturing Engineering of 176 Bi-Level Passenger Cars contains Exhibit 2, Price Proposal. The Exhibit indicates the fixed fee value will include the labor cost and the Burden Rate is 10% of the fixed labor

cost.

As discussed during the review pertaining to A & E blanket type of contracts, Metra did not negotiate the fixed hourly or burden rates prior to contract approval. The actual negotiation occurred at the time a "task" was assigned, and then estimated hours were included along with the hourly and burden rate.

Following the FTA review, staff immediately incorporated the negotiation process to establish the fixed hourly rates and burden rate prior to any contract approval for all blanket fixed-fee type A & E contracts.

Element 24 – Clear, Accurate and Complete Specifications

Of the fifty-four procurements reviewed, seven (7) were found to be deficient. Metra's response is partially addressed in Element 13 above, relating to "Brand Name" reference and listing salient characteristics.

The user departments will be tasked with "beefing-up" specifications and staff will hold pre-bid meetings, when appropriate, to address any questions that potential vendors may have. Staff will also continue to return purchase requisitions that are not complete back to the requisitioning department.

Element 25 – Adequate Competition – Two or More Competitors

Three (3) files were noted as deficient. In all three solicitations, specifications were very specific and detailed. As was noted in the review, Metra has an effective process in place to canvas suppliers when only one bid is received. Additionally, staff does review the solicitation process and canvas responses to determine if there is adequate competition or that a single source is justified.

Metra concurs, a single source justification will be included in the file at the conclusion of the canvas review, or it will be noted that Metra will re-solicit bids/proposals based upon the canvas results.

Element 36 – Evaluation (RFP)

Metra does have established evaluation processes.

Going forward, the Evaluation Criteria "in order of importance" will be noted starting immediately. This process has already been implemented. The appropriate staffs in Professional Services have already reviewed the procedure.

Element 37 – Price and Other Factors (RFP)

Metra uses the Brooks Act method of procurement for A & E and construction management type contracts. The Request for Proposal for these contracts lists the number of contracts that will be awarded and the "not to exceed" amount for each type of contract. The contract award may be for signal design, bridge design, or construction management, etc.

Metra concurs and Element 19 above addresses how future A & E type contracts will be negotiated prior to contract award for fix-fee contracts.

In Element 37 the Reviewer indicates that Metra used the Brooks Method improperly for the non A & E services that were identified during the review. In these contracts, cost was an element of the evaluation; however, the technical portion was opened, evaluated, and scored first, and then the cost portion was opened and evaluated. Finally, the two portions, technical and cost, determined the total score for the respective proposer. The reason justifying keeping cost separate was so that the cost portion would not influence the evaluators' analysis of the technical portion of the proposal.

Element 38 – Sole Source If Other Award Is Inadequate

There was a single contract found to be deficient. At the review it was noted that the contract was inadvertently entered with the wrong general ledger account code and should not have been funded with federal funds.

Metra concurs and the funding source has been corrected and federal funds are not being used. Since no Federal funds were involved, Metra requests that the deficiency be eliminated from the FTA report.

Element 39 – Cost Analysis Required (Sole Source)

Of the three (3) procurements reviewed for this requirement, all three (3) were found to be deficient. The purchase order file for door closers and anti-freeze devices did contain a price analysis and Metra's Audit Department cost analysis summary (see attached Element 39). Metra's Audit Department conducted an independent evaluation of price as the vendor declined to provide costs.

The third purchase order identified for Fleet Maintenance was inadvertently coded incorrectly (input error), which identified it using Federal funds. It is not funded with Federal funds and the funding source has been corrected. *See Element No. 38.*

It is Metra's practice to perform a cost analysis on all federally funded sole source procurements. The appropriate staff has reviewed the required process to ensure

its inclusion in the contract file.

Element 41 – Cost or Price Analysis

Fifty-three (53) procurements were reviewed. Six (6) were found to be not deficient, and forty-seven (47) were found deficient.

While the review did find some good examples of price analysis, the documentation of this analysis was missing in the majority of the files reviewed.

Metra concurs and will implement the recommendation and modify Metra's bid tabulation document sheet to include a statement, based upon staff's analysis, that the price quoted by the lowest responsive and responsible bidder is fair and reasonable based on competitive bids. Additionally, the price/cost analysis requirement is included in the contract file checklist. The process has been implemented with the appropriate staff.

Element 42 – Written Record of Procurement History

Of the fifty-four procurements reviewed, fourteen (14) were found to be deficient. In general, there is a lack of file organization at METRA and minimal documentation on procurement planning activities. In the fourteen (14) procurement files found to be deficient, the reviewer was unable to determine the reason for the contractor selection or the basis for the contract price.

Metra's course of action is as follows:

A "Contract/Purchase Order File Content Check List Form for Contracts/Po's Over $10,000.00" is in the file for all contracts solicited and awarded using the IFB or the RFP process. The checklist consists of Date, Initials (Buyer), and Activity of the following:

Pre-Award Activity

1. *Requested Independent Cost Estimate of Contract/Purchase Order Valuation*
2. *Received Independent Cost Estimate of Contract/Purchase Order Valuation*
3. *Copy of Requisition*
4. *Invitation for Bids Memorandum with Pre-bid summary*
5. *Certified Copy of Invitation for Bids*
6. *Internal Request for Quotation Checklist to Appropriate Using Department*
7. *Addenda and/or other External Correspondence/Internal Memoranda*
8. *Applicable Exhibits Included*
9. *Bid/Proposal Tabulation, Blue Copy of P.O. or Original Contract*

10. *Received Evaluation Form IFB/RFP Evaluation Letter and Supportive Selection Documentation sent to/from Using Department*
11. *Internal/External Letters/Memoranda, i.e. DBE Correspondence, Short List, Insurance*
12. *Protest Notification Forward to Grants Department (If Applicable)*
13. *Protest Resolution Forward to Grants Department (If Applicable)*
14. *4400 Form for A & E/Professional Services Contracts*
15. *Price/Cost Analysis (When Required)*

Post Award Activity

1. *Performance Labor Material Bond (Construction Only)*
2. *Notice to Proceed/Vendor Acknowledgment*
3. *Contracts Completion Form*
4. *Contract/P.O. Complete/100% Received*

The file also has a list of vendors solicited for an IFB or RFP. The requisition is reviewed by Metra's Grants Department to assure that funds are available prior to processing the IFB or RFP solicitation.

Additionally, see the attached instructions for the Organization of Contract File Folders, Operating Files and Purchase Orders (Capital and Operating). This process is in place and being used by the appropriate staff.

Element 44 – Out of Scope Changes

The review noted three (3) contract change orders in procurements that were out of scope and were not treated as sole source procurements.

The change order for the installation and service of core routers consisted of extending the contract completion date by one year at the same pricing, and to increase the value of the contract for the work performed during this period. The fees of the original contract remained the same during the extended period of performance.

Metra concurs and the processing for the additional routers should have been done as a sole source.

In reviewing the ticket vending machine file for the change order, Metra found that the number of machines was increased from 15 to 29, and the file has documentation dated March 26, 2010 from Metra's Audit Department. The documentation states that the "quoted price for the Change Order appears reasonable." The additional 14 vending machines were ordered at the direction of the Executive Director.

Metra concurs and the processing for the additional machines should have been done as a sole source.

The change order for the ADA improvements at the BNSF – Route 59 station upgrade consisted of widening the existing platform, adding additional lighting, sidewalk widening, landscaping, and replacing an existing bike rack that was in place prior to the improvements. The bike rack was removed for the improvements but was damaged in the process and was not salvageable.

Metra concurs and the processing for the bike rack should have been done as a sole source.

Element 46 - Progress Payments

The deficient files were lacking the statement that "title for the completed work will transfer to Metra upon payment." Metra's construction contracts do contain the appropriate language. However, the deficient files lacking the appropriate language were procurements under $10,000.

Metra concurs will notify all bidders that Federal statutory and regulatory applicable requirements do apply for federal funded purchases. Additionally, required clauses will be maintained in the respective procurement file. This process will be in place within 30 days.

Element 48 – Cost Plus Percentage of Cost

The Element's Discussion listed on the FTA Procurement System Review states:

"Of the forty-four (44) procurements reviewed for this requirement, forty-one (41) were not deficient and three (3) were found deficient. In two (2) cost-plus-fixed-fee procurements for construction management services, there was a fixed-fee by task order rather than an overall fixed-fee for the contract. Under the cost–plus-

percentage-of-cost methodology there is no stated limit of fee the supplier may be able to receive. The procurement for ticket vending machines was documented as a cost-plus-fixed-fee contract; however, no fixed-fee was noted in the compensation provisions. METRA should include a total fixed-fee for all cost type contracts."

Metra does not concur. Metra's 4400 Cost Form 4400 for construction contracts does have a fixed-fee field on the form. However, the contract for the vending machines states: "the prices stipulated on Metra's Form 4400 (or any other cost or price schedule) which is either attached as Exhibit 2 of this Agreement, or is incorporated by reference, as directed by Metra." This contract did not require a Form 4400 since price lists were in Exhibit 2. Exhibit 2 consisted of three price lists:

the first price list is for the vending machines at a unit price of $1,234.94 each; the second price list is for the Data System Elements at a lot cost of $64,800.00, and in addition; a total of four lots of various spare parts at a total cost of $105,070; and the third price list is for various communication, transactional, maintenance and customer support fees at a rate of per transaction or per month fees.

The other two (2) deficient findings pertained to A & E blanket type of contracts, Metra did not negotiate the fixed hourly or burden rates prior to contract approval. The actual negotiation occurred at the time a "task" was assigned, when estimated hours were included along with the hourly and burden rate.

Metra concurs and effective immediately the process has been implemented for negotiating to establish the fixed hourly rates and burden rate done prior to any contract approval for all blanket fixed-fee type A & E contracts.

Element 52 – Serial Price Negotiations (A & E)

Two (2) A & E procurements were reviewed for this requirement and one (1) was found deficient due to lack of documentation on negotiations conducted. There was no documentation on how the final blanket purchase order value was arrived at or any evidence of negotiations.

This contract was one of 8 awards issued from Request for Proposal No. 87659, and the original scoring documentation is located in the first contract, K30869, and is referred to in the contract file that the review found deficient. However, the value of the contract is noted on the Request for Proposal as a "not to exceed" amount, and in this case, that contract had a set value of $500,000.00. In addition, Metra did not negotiate the fixed hourly or burden rates prior to contract approval. The actual negotiation occurred at the time a "task" was assigned when estimated hours were included along with the hourly and burden rate.

Metra concurs and effective immediately the process has been implemented for negotiating to establish the fixed hourly rates and burden rate done prior to any contract approval for all blanket fixed-fee type A & E contracts.

Element 86 – Clauses

The 23 deficient files lacking the appropriate FTA Clauses were identified against Metra's procurements under $10,000.

Metra concurs and will notify all bidders that Federal statutory and regulatory applicable requirements apply for all federally funded purchases. Additionally, required clauses will be maintained in the respective procurement file. This process will be in place within 30 days.

Other Matters – Buy America Requirements

Metra is aware of Buy America requirements pertaining to Rolling Stock procurements and has completed "pre" and "post" Buy America audits for past rolling stock procurements.

Metra concurs that the procurement of rubber tire cargo vans should have been done in accordance with Buy America requirements. Staff is in the process of reviewing what is required for rubber tire vehicles and then they will perform the appropriate analysis and reviews.

Element 39

Metra

Memorandum

To: Carolyn Capranica, Department Head
Procurement

November 17, 2009

From: Eric Fernandes, Director
Audit

Subject: Sole Source PO 91173 totaling $329,783.58 for
Door Closers & Anti-Freeze System Components
Vapor Stone Rail Systems – IFB/RFP R10716

As requested on 11/6/09, Audit has reviewed PO K91173, the Sole Source Bid for (14) fourteen door kits from Vapor Stone Rail Systems to be used in a Pullman commuter coach rehabilitation project at the KYD Shop. Based on cost information provided by the vendor on 11/12/09, the quoted price appears reasonable.

Our scope included an analysis of the cost of the (8) eight parts involved. We relied upon Mechanical for the scope of the work and the quantities necessary to complete the work.

Please call me if you have any questions or need additional information.

EF/dh

cc: F. Swalarz
P. Kisielius
R. Soukup

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Memorandum

November 6, 2009

To: File

From: Carolyn J. Capranica, C.P.M.
Department Head, Procurement

Subject: Purchase Order No. K91773
Vapor Stone Rail Systems
Door Closers and Anti-Freeze Systems
Price Analysis

The following is a price analysis for the subject purchase order.

Price Analysis
Vapor Stone Rail Systems

Line Item	Vapor Part No.	Description	Previous Unit Price	Current Unit Price	% +/-
1	59146581-10	Operator, Door Assembly – L.H.	$3,951.51	$3,951.51	0%
2	59146580-10	Operator, Door Assembly – R.H.	$3,951.51	$3,951.51	0%
3	59227861700	Light Assy. Door Closing Display	$117.70	$117.70	0%
4	58440331-04	Cover, Switch Assy.	$438.70	$438.70	0%
8	16210004-18	Thermostat, Bi-Metal FH Close 30 DGF	$162.64	$162.64	0%

The above price analysis compares prices on the subject purchase order to previous Purchase Order Nos. B90862 dated 8/18/09 and K90554 dated 8/18/09. Since there is no increase from the previous purchase orders Procurement finds the prices quoted to be fair and reasonable.

Attachment: B90862 Price List
K90554

Distribution: P. O. File
Vendor File

n:VaporStoneRailSystemsPriceAnalysisK91773

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Metra

Memorandum

March 14, 2011

TO: DISTRIBUTION

FROM: Carolyn J. Capranica, Department Head
Procurement

SUBJECT: Organization of Green File Folders, Operating Files and Purchase Orders (Capital and Operating)

Attached for your use are guidelines that should be followed for file folders and blue folders.

1. Organization of File Folders for:

   A. All Formal Capital Purchase Orders Over $10,000.00 (Capital and Operating)

2. Organization of Blue Folders for:

   A. All Formal Purchase Orders Over $10,000.00

Please remember that is is your responsibility to organize your file folders according to the guidelines.

If you have any questions, please feel free to comment.

DISTRIBUTION:
P. Kiselius
F. Smalarz
C. Gamboa
L. Lee
K. Noble
U. Damian
D. Johnson
J. Zellers

I:OrganizationFileFolders

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PART I - RIGHT SIDE OF FOLDER

ORGANIZATION OF GREEN FILE FOLDERS

FOR

ALL FORMAL CAPTIAL PURCHASE ORDERS OVER $10,000.00

Part I - For Pre Award Documents

Part II - For Post Award Documents

Part I - Pre Award
(from bottom to top)

LEFT

All Pre Award correspondence in chronological order (earliest on bottom to latest on top).

1. Buyers Worksheet.
2. Summary of Metra Procurement Pre-Bid/Memo to Management Coordinator.
3. Distribution Approval Memos.
4. Request for Bids from vendors.
5. No Offer Bid Sheets.
6. Cost Estimates from Materials.

Part I - Pre Award
(from bottom to top)

RIGHT

1. Copy of Purchase Requisition.
2. Invitation for Bids Speed Memo.
3. Certified Copy of Invitation for Bids.
4. Request for Quotation Checklist with Bidders List.
5. Blank Copy of Request for Quotation with all Exhibits.
6. Addendums (earliest on bottom to latest on Top).
7. Bids Received.
8. Bid Tabulation Sheet.

PART II - LEFT SIDE OF FOLDER

Part II - Post Award
(from bottom to top)

Part II - Post Award
(from bottom to top)

LEFT	RIGHT
All Post Award correspondence in chronological order (earliest on bottom to latest on top). 1. Technical Evaluation/Non-Responsive form to and from user department. 2. Letter to and from Vendors. 3. Memos/Canvass relating to cost/price Analysis for single bid/sole source (if applicable). 4. Purchase Order/Contract Check List/Closeout List.	1. Documents from the Blue Folder. a. Bidders List b. Copy of Purchase Requisition. c. Certified Copy of Request for Proposal/Quotation. d. Correspondence in chronological order (earliest on bottom to latest on top). e. Completed Routing Slip from front of blue folder mounted on 8½" x 11" sheet. f. Summary of Procurement Form 2. Completely Executed Purchase Order (blue copy) with all Exhibits. 3. Acknowledgement Copy of Purchase Order.

ADDITIONAL INSTRUCTIONS

1. Label and Identify Projects in Green Folders according to April 28, 2009 memorandum and examples attached.

2. All documents will be punched at the top.
   DO NOT put documents in the folder upside down.

ORGANIZATION

OF

FORMAL OPERATING PURCHASE ORDERS OVER $10,000.00

Operating purchase orders will not use a green folder. They will be bound with Acco fasteners in the following order from bottom to top: Pre-Award/Post-Award

Pre-Award (from bottom to top)

All pre-award correspondence in chronological order (earliest on bottom to latest on top).

1. Copy Purchase Requisition
2. Cost Estimate
3. Buyers Worksheet
4. Blank copy of Request for Quotation with all Exhibits
5. Summary of Metra Procurement Pre-Bid/with memo to Management Coordinator
6. Distribution Approval Memos
7. Invitation for Bids (Speed) Memo
8. Certified Copy of Invitation for Bids
9. Request for Quotation Checklist with Bidders List
10. Addendums (earliest on bottom to latest on top)
11. No Bid Offer Sheets
12. Bids Received • Strip and dispose all unnecessary documents retaining only those that have been signed, notarized, etc., by bidder.
13. Bid Tabulation Sheet

1

Post-Award (from bottom to top)

All post award correspondence in chronological order (earliest on bottom to latest on top).

1. Technical Evaluation to and from User Department

2. Letters to and from Vendor

3. Purchase Order/Contract Checklist/Close Out

4. Documents from the Blue Folder:

   a. Bidders List
   b. Copy of Purchase Requisition
   c. Certified Copy of Invitation for Bids
   d. Correspondence in chronological order (earliest on bottom to latest on top).
   e. Completed Routing Slip from front of Blue Folder mounted on 8-½" x 11" sheet
   f. Summary of Procurement Form

5. Completely Executed Purchase Orders (blue copy) with all Exhibits

6. Xerox Copy of Purchase Order

ORGANIZATION OF BLUE FOLDERS

FOR

PURCHASE ORDERS

LEFT SIDE (from bottom to top)	RIGHT SIDE (from bottom to top)
Correspondence in chronological order (earliest on bottom to latest on top). 1. Copy of Certified Invitation for Bids. 2. Recommendation for Award Memo from the Using Department (if applicable). 3. Memo relating to a price/cost analysis for a single bid and sole source (if applicable). 4. Summary of Procurement Form (always on the top).	1. Bidders List. 2. Original of Purchase Requisition. 3. Purchase Order with all the Exhibits.

Metra

Memorandum

Date: April 28, 2009

To: Distribution

From: F.E. Smalarz, C.P.M.
Senior Director, Materials Management

Subject: **Labeling & Identifying Projects in Green Folders**

Attached are four (4) examples of how we want to see the green folders labeled. This description, in addition to the Contract/Purchase Order/MPA Number, will aid auditors and others looking for files.

Effective immediately, please label all green folders currently in your possession, all future green folders and any green folders pulled from the file shelves for reference.

If you have any questions, please come and see me.

Thank you.

Attachments

DISTRIBUTION
Department Heads
Contracting Agents
Senior Buyers
Buyers
P.A. Kisielius

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[redacted]

EX. 1
P. 1 OF 2
(PRIOR TO AWARD)

P.A. SYSTEM PARTS

RFP
OR
IFB # 96268

RFP/
IFB - 5/8/04 } DATED ADVERTISED.

OPEN - 5/27/04
- DUE

PROJECT No. AZ3403 - 51423004
CRD - 122.

FRONT

[redacted]

EX. 1
P. 2 of 2

BACK

P.A. SYS. PARTS

[redacted]

EX. 2
P. 1 OF 2

K 43392, 6/16/04
GFI GENPARE
P.A. SYSTEM PARTS

RFP OR
IFB # 96268
RFP/IFB - 5/8/04
OPEN DATE - 5/27/04

PROJECT No. AZ3403 - 51423004
ORD - 122.

FRONT

[redacted]

EX. 2
P. 2 OF 2

BACK

K 4 3 3 2

GPI CENTARE
P.A. SYS. PARTS

[redacted]

EX. 3
P. 1 of 2

K 55338, 8/3/05

TRIANGLE ENGINEERED PRODUCTS
OVERHAUL TBU CYLINDER LINERS.

RFP/
IFB # 15491

5/5

DUE: 5:00 P.M., C.S.T.
APRIL 6, 2005.

PROJECT No. CW3907-51423004
MET-125.

FRONT

[redacted]

[redacted]

EX. 3

P. 2 of 2

BACK

TRIANGLE

[illegible] TRIM LINERS

[redacted] EX. 4
P. 1 of 2

K 54702

ELECTRIC MOTOR CORP.

OVERHAUL HIGHLINER CAR
MOTOR ALTERNATORS.

IFB # - 15451 — REBID

IFB - ~~10/19/04~~ 12/11/04

OPEN - ~~10/26/04~~ 01/06/05

PROJECT No. CR3806-51422004
IL-90-X474/MET-062.

11/11/04
HOLD
FOR REVISED
SPEC.

FRONT

[redacted]

EX: 4
P. 2 of 2

BACK

ELECTRIC MTR. CORP.
OVERNL. MA'S

K90128

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date February 16, 2009

Signature Dal J. McMillan

Company Name Joe Rizza Ford, Inc.

Title Treasurer/Secretary

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

K90086

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date 03-09-09

Signature

Company Name SUTTON FORD INC

Title President

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

K90083

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date March 25, 2009

Signature [illegible]

Company Name Ottawa Ford LM, Inc.

Title President

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

K90078

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(l) and the applicable regulations in 49 CFR Part 661.5.

Date March 25 - 2009

Signature

Company Name Terry's Ford Lincoln-mercury of Pestone

Title Commercial fleet mgr.

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (l) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date

Signature

Company Name

Title

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

K05158

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date 10-6-10

Signature Linda Sorich

Company Name Terry's Ford Lincoln

Title Fleet Manager

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

ATTACHMENT D

547 W. Jackson Blvd. Chicago, Illinois 60661 Telephone: (312) 322-6900 TTY# 1-312-322-6774

PROCUREMENT SYSTEM REVIEW TRAINING

Friday, March 23, 2012

9:00 AM - 11:00 AM

MATERIALS MANAGEMENT BID OPENING ROOM

AGENDA

Elements to Review and Dicuss Corrective Actions:

9:00 AM – Session Starts

- **Element #2:** Contract Administration System
- **Element #5:** System for Ensuring Most Efficient and Economic Purchase

Break – 10 minutes

- **Element #7:** Independent Cost Estimate
- **Element #59:** Pre-Award Buy America
- **Element #60:** Post-Award Buy America

Metra is the registered service mark for the Northeast Illinois Regional Commuter Railroad Corporation.

Metra

Meeting Attendance

Subject: Procurement System Review Training: Elements 2, 5, 7, 59 and 60

Date 3/23/2012 Time 9:00 AM Location 11th Floor Bid Room

Name	Affiliation/Position	Phone No.	E-mail Address (if applicable)
Paul A. Kisielius	Metra	322-6666	kisielin@metrarr.com
Carlos Gamboa	"	322-6668	cgamboa@metrarr.com
Steph Bauman	" /Contracting Agent	323-7095	sbauman@metrarr.com
Tom STUEBNER	ATTORNEY	8017	TSTUEBNER@METRARR.COM
DAVE DEYOUNG	METRA LAW	6688	ddeyoung@metrarr.com
DENISE Johnson	Buyer	6654	djohnson@metrarr.com
Michael Darnell	Materials Analyst	6678	mdarnell@metrarr.com
STEVEN VARGAS	SR. MATH. COORD.	6669	SVARGAS@METRARR.COM
URBANO Damian	Buyer	6662	UDamian@metrarr.com
Brenda Resendez	Buyer	6671	bresendez@metrarr.com
Anne Marie Di Prima	Metra/Prof. Services Assoc.	6676	adiprima@metrarr.com
Jennifer Tellers	Buyer	66663	jtellers@metrarr.com
Bob Rich	Contracting Agent	6674	rrich@metrarr.com
Carolyn Capranica	Dept. Head, Procurement	6667	ccapranica@metrarr.com
Ron Lee	Sr. Buyer, Procurement	6656	LLee@metrarr.com
Bruce Darin	Dept. Head, Materials	6655	BDARIN@METRARR.COM

2/02

Metra
The way to really fly
547 W Jackson Blvd Chicago, Illinois 60661 (312) 322-6900 TTY#1-312-322-6774

Memorandum

DATE: March 19, 2012

TO: Procurement, Professional Services/Contracts and Materials Management Staff

FROM: Paul A. Kisielius, Senior Division Director
General Administration

SUBJECT: Procurement System Review Training

I will be conducting training sessions on the deficient Elements that were identified during Metra's Procurement System Review ("PSR"). It will take several sessions to cover all 24 deficient Elements. The first session will be held Friday, March 23rd from 9:00 AM to 11:00 AM in the bid opening room. Those that receive this letter are expected to attend the mandatory training session. The PSR Elements that we will review on Friday are Element numbers 2, 5, 7, 59 and 60.

Attached is a copy of the Procurement System Review Final Report dated July 21, 2011. The findings of deficiency start on page 22 and are in numerical order. Please read and be ready to discuss the respective deficiency for the Elements listed above. Prior to the training session each of you will receive the respective corrective action Metra is to institute for each deficient Element.

These sessions are intended to advance our knowledge of the FTA Circular and to correct our past procurement actions into acceptable and compliant procurement activities.

Pam's

U.S. Department
of Transportation
**Federal Transit
Administration**

REGION V
Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 320
Chicago, IL 60606-5253
312-353-2789
312-886-0351 (fax)

July 21, 2011

Mr. Alex Clifford
Executive Director
Metra
547 West Jackson, Suite 1100
Chicago, IL 60661

Re: Procurement System Review
Final Report

Dear Mr. Clifford:

Thank you for assisting the Federal Transit Administration's (FTA) Procurement System Review (PSR) contractor, Calyptus Consulting Group, in performing their review of the Northeast Illinois Regional Commuter Railroad Corporation (Metra). The purpose of this review was to assess whether Metra's procurement policies and procedures are in compliance with applicable federal standards and principles. The review covered 67 FTA funded procurements.

The Calyptus Consulting Group performed interviews of key personnel and reviews of selected contract and purchase order files. The review found Metra deficient in 24 procurement elements. Enclosed is a copy of the final report. Please review Section V which includes the "Reviewing Contractor Comments". This section states whether Metra's responses to the corrective action plan were acceptable. Please closely review this section and provide a response based on the timeframes identified. If you are unable to meet a deadline, please submit a written request for an extension.

Please note that several findings relate to the following contracts: Terry's Ford, LTK Engineering Services, Nippon Sharyo, and Engineering and Management Specialist, Inc. FTA will conduct a separate assessment of these contracts to determine their eligibility for federal funding. You will receive more details regarding this action under a separate letter.

We greatly appreciate your continued commitment to making public transportation America's mode of choice. Thank you for your personal contribution, cooperation and assistance during this PSR since we realize that the review has involved effort, time, and planning.

If you have any questions regarding this report or the PSR process, please contact Lisa Joiner or me at 312-353-2789.

Sincerely,

Dominick J. Gatto, PE
Director, Office of Program Management and Oversight

Enclosure

cc: David Simmons

#2

FEDERAL TRANSIT ADMINISTRATION

Metra

The way to really fly

FINAL REPORT: NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION (METRA), CHICAGO, IL

PROCUREMENT SYSTEM REVIEW

SITE VISIT: JANUARY 24-27, 2011

FINAL REPORT DATE: JULY 1, 2011

CALYPTUS
Consulting Group, Inc.

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DRAFT

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DRAFT

I. EXECUTIVE SUMMARY

Background

The Federal Transit Administration (FTA) contracted with Calyptus Consulting Group, Inc. (the 'reviewing contractor') to review the procurement system used by the Northeast Illinois Regional Commuter Railroad Corporation (Metra) in the expenditure of grant funds.

Metra's last procurement system review was in 2007; as a Top Thirty grantee, Metra is subject to a review every three years. Metra was selected for a PSR for this reason.

The procurement system review process, as indicated on the FTA's Web site, uses a standardized approach, interview guides, checklists, and reporting framework. This process was applied in its entirety without change for the review of the Metra.

Briefing and Opening Meeting

The reviewing contractor held a teleconference with the members of the FTA oversight team in the Region V office on January 6, 2011 to understand the background for the Procurement System Review (PSR) and to review recent audit reports, any past assessments, and information on the current projects. Several key procurements were identified and added to the contract sample.

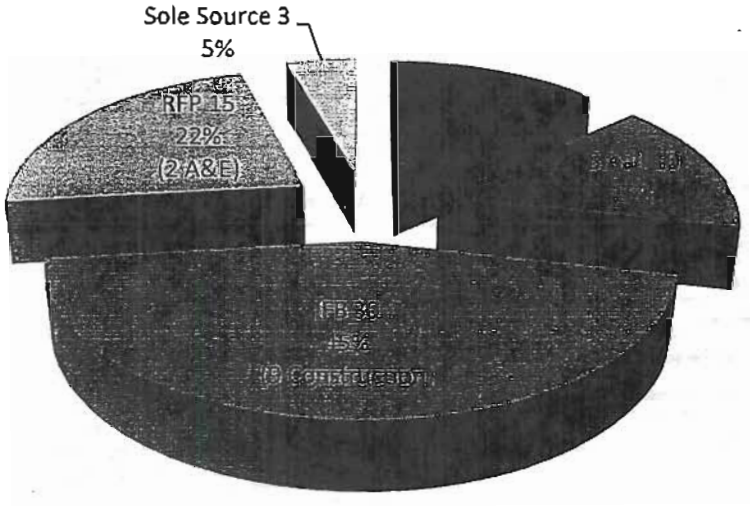
On January 24, 2011, an opening conference was held to explain the process to be used during the review. A list of the individuals attending the opening conference can be found on pages 13 and 14 of this report.

Copies of policies and procedures, organization charts (See Appendix C) and lists of eligible contracts were received prior to the opening conference. Interviews with staff were conducted, including the Executive Director, Chief Financial Officer, Chief Engineering Officer, Deputy Director for Corporate Affairs and Legal, DBE Program Director, Capital Grants Manager Head of Procurement, and Head of Internal Audit. The focus of interviews and discussions included the review of:

- Protest Procedures
- Policies and Procedures
- Standards of Conduct
- Contract Administration
- Efficient and Economic Purchases
- Organization and Personnel
- Status of Purchasing

Procurements Reviewed

Sixty-Seven (67) procurements were selected for review against the requirements of Circular 4220.1F, as indicated by procurement method below:



File Review and Closing Meeting

The file review was completed on January 27, 2011 and the Exit Conference was held on that day to formally present the findings of the review to FTA Regional staff and Metra management.

Results of the Procurement System Review

Metra demonstrated its compliance in a number of key areas required by the Master Agreement and FTA Circular 4220.1F. The grantee was found not deficient in twenty-nine (29) of the elements. Six (6) elements were not applicable or not observed. The grantee was found deficient in twenty-five (25) of the elements. The reviewing contractor also made seventeen (17) suggestions to improve the Metra procurement system.

The overall findings are summarized as follows:

Areas Not Deficient	30
Areas Deficient	24
Areas Not Applicable or Observed	6
Suggestions for Improving the Procurement System	17

Summary of PSR Findings by Element

The summary below illustrates the findings by element, and the proposed corrective action timeframes from the date of the final report:

No.	Element	Basic Requirement 4220.1F	ND	D	NA	Corrective Action Timeframe
1	Written Standards of Conduct	III, 1.a.b.c.	3			
2	Contract Administration System	III, 3.		3		90 Days
3	Written Protest Procedures	VII, 1. a. b.	3			
4	Pre-Qualification System	VI, 1.c.			3	
5	System for Ensuring Most Efficient & Economic Purchase	IV, 1. b. c. e.		3		90 Days
6	Procurement Policies & Procedures	III, 3.a.		3		90 Days
7	Independent Cost Estimates	VI, 6.	45	10		30 Days
8	A&E Geographic Preferences	VI, 2. a. (4) (g)	2	0		
9	Unreasonable Qualification Requirements	VI, 2. a. (4) (a)	51	0		
10	Unnecessary Experience and Excessive Bond	VI, 2. a. (4) (b) (e)	44	0	0	
11	Organizational Conflict of Interest	VI, 2. a. (4) (h)	0	0	44	
12	Arbitrary Action	VI, 2. a. (4) (j)	50	5		30 Days
13	Brand Name Restrictions	VI, 2. a. (3)	1	7	43	30 Days
14	Geographic Preferences	VI, 2. a. (4)	54	0		
15	Contract Period of Performance Limitations	IV, 2.e.(10)	9	1	45	30 Days
16	Written Procurement Selection Procedures	III, 3. a.; VI, 2. e.	32	9		30 Days
17	Solicitation Prequalification Criteria	VI, 1.c.(1)(2)(3)	0	0	41	
18	Award to Responsible Contractors	VI, 8. b.	17	27		30 Days
19	Sound and Complete Agreement	III, 3. b.; III, 3.b.	42	2		30 Days
20	No Splitting [Micro-purchases]	VI, 3. a.	9	0	0	
21	Fair and Reasonable Price Determination	VI, 3. a.	9	0	0	
22	Micro-Purchase Davis Bacon	VI, 3. a.	0	0	9	
23	Price Quotations [Small Purchases]	VI, 3. b.	10	0		
24	Complete Specifications	VI, 2. a.; VI, 3. c.	47	7		30 Days
25	Adequate Competition - Two or Responsible Bidders	VI, 3. c. (b)	38	3		30 Days
26	Firm Fixed Price [Sealed Bid]	VI, 3. c. (1) (c)	29	0		
27	Selection on Price [Sealed Bid]	VI, 3. c. (1) (d)	29	0		
28	Discussion Unnecessary [Sealed Bid]	VI, 3. c. (1) (e)	29	0		
29	Advertise/Publicized	VI, 3. c. (2) (a)	41	0		
30	Adequate Solicitation	VI, 3. c. (2) (b)	41	0		
31	Sufficient Bid Time [Sealed Bid]	VI, 3.c.(2)(d)	29	0		
32	Bid Opening [Sealed Bid]	VI, 3.c.(2)(e)	29	0		
33	Responsiveness [Sealed Bid]	VI, 3.c.(2)(f)	29	0		
34	Lowest Bid [Sealed Bid]	VI, 3.c.(2)(f)	0	0	29	
35	Rejecting Bids [Sealed Bid]	VI, 3.c.(2)(g)	5	0	24	
36	Evaluation [RFP]	3. d. (2) (d)	9	3		30 Days
37	Price and Other Factors [RFP]	3. d. (2) (e)	8	4		30 Days

No.	Element	Basic Requirement 4220.1F	ND	D	NA	Corrective Action Timeframe
38	Sole Source If Other Award is Infeasible	VI, 3. h.	3	0		
39	Cost Analysis Required [Sole Source]	VI, 6. a.	0	3		30 Days
40	Evaluation of Options	VI, 7. b.	1	0	43	
41	Cost or Price Analysis	VI, 6.	6	47		30 Days
42	Written Record of Procurement History	III, 3. d	40	14		30 Days
43	Exercise of Options	V, 7. a. (1) (a) (b)	1	0	43	
44	Out of Scope Changes	VI, 3. h. (3) (c)	0	3	42	30 Days
45	Advance Payments	IV, 2. b. (4) (b) 1, 2	44	0		
46	Progress Payments	IV, 2.b.(5)(c)	10	9	25	30 Days
47	Time and Materials Contracts	VI, 2.c.(2)(b)	3	0	41	
48	Cost Plus Percentage of Cost	VI, 2.c.(2)(a)	41	3		30 Days
49	Liquidated Damages Provisions	IV, 2.b.(6)(b) 1)	11	0	33	
50	Piggybacking	V, 7. a. (2)	0	0	3	
51	Qualifications Exclude Price [A&E]	VI, 3.f.(3)	2	0		
52	Serial Price Negotiations [A&E]	VI, 3.f.(3)	1	1		30 Days
53	Bid Security [Construction over $100,000]	IV, 2.h.(1)(a)]	8	0	0	
54	Performance Security [Const. over $100,000]	IV, 2.h.(1)(b)	8	0	0	
55	Payment Security [Construction over $100,000]	IV, 2.h.(1)(c)	8	0	0	
56	Clauses	IV, 2.	30	23		30 Days
57	Pre-Award Review - Rail	49 C.F.R. 663	1	0	0	
58	Post-Award Review - Rail	49 C.F.R. 663	1	0	0	
59	Pre-Award Review - Bus	49 C.F.R. 663	0	1	0	30 Days
60	Post-Award Review - Bus	49 C.F.R. 663	0	1	0	30 Days

Legend:

ND = Not Deficient

D = Deficient

N/A = Not applicable or not observed

II. DESCRIPTION OF THE GRANTEE

History

In 1974, the Regional Transportation Authority (RTA) was created by the Illinois General Assembly to coordinate and assist public transportation throughout the six-county metropolitan region and to serve as a conduit for the state and federal subsidies needed to keep the system operational. Due to ongoing financial pressures, the RTA was subsequently reorganized by the Legislature, in 1983, to provide for a service-board approach to the day-to-day operation of bus, rapid transit and commuter rail services system-wide. Under these changes to the RTA Act, the Commuter Rail Service Board emerged as the agency overseeing all commuter rail operations in the six-county area and was charged with a broad range of responsibilities with respect to fare and service levels, budgeting, capital programming, long-range planning and strategic service expansion. The Commuter Rail Service Board introduced the "Metra" name in 1984 as the service mark for the commuter system.

Metra directly operates seven of its lines and contracts with two freight carriers to run four others. Metra's contracted services include the Burlington Northern Santa Fe line to Aurora, as well as the three Union Pacific lines: the UP North Line to Kenosha, Wisconsin; the UP Northwest Line to Harvard, with branch line service to McHenry; and the UP West Line to Elburn that was extended from its former terminus at Geneva in 2006. In the case of Metra's direct operations, the services are actually provided through Metra's operating arm, the Northeast Illinois Regional Commuter Railroad Corporation, or NIRC.

FTA Funding and ARRA Projects

Metra has 52 open FTA grants in the amount of $2,199,807,879. Metra received two ARRA grants in 2009. The two grants total $141 million and fund 14 projects, as well as maintenance expenses. The ARRA funded projects as of November 30, 2010 are noted below:

1. Union Pacific Northern Line Bridge Reconstruction
2. Burlington Northern Santa Fe (BSNF) Fiber-Optics and Road Crossings
3. Bridge Rehabilitation – 59th and 60th
4. Bridge Rehabilitation – 75th and 79th
5. Bridge Rehabilitation – 73rd and 76th
6. 35th Street Station
7. Remanufacture of 40 Locomotives
8. Budd Car Alternating Current Conversion
9. Winnetka Station Restoration, Platforms, Shelter, and Elevators
10. Joliet Platforms
11. Lockport Platforms
12. Golf Station Platforms
13. Elburn Station Platforms
14. Pingree Road Station Parking

All operating funds from ARRA grants were used to fund force account work for preventive maintenance. 100% of these funds were expended as of December 31, 2010.

Source of Funds

The source of capital funds for 2010 is shown in the table below:

Source of Funds	Percent of Total Funds
Local	3%
State	9%
Federal Assistance	40%
Other Funds (state bonds)	48%

Procurement System

The Materials Management group is responsible for all procurement activities at Metra. The group is divided into three divisions; procurement, professional services, and materials. The Senior Director for Materials Management oversees the group and reports to the Senior Division Director for General Administration (see Appendix C for an organizational chart). The entire group consists of 18 staff members; several hold the Certified Purchasing Manager (C.P.M.) designation from the Institute for Supply Management (ISM). Staff experience ranges from three (3) to fifteen (15) years.

The thresholds and approval levels for various methods of procurement are noted in the table below:

Threshold	*Method of Procurement*	*Approval Level*
Up to $500	Micro Purchase / no quotes required	Department Heads
$500 - $10,000	Small Purchase / 3 quotes required	Department Heads
Over $10,000	Competitive Process – IFB or RFP	Executive Director

The Board of Directors approves RFPs over $10,000 and final decisions made using the RFP method of procurement.

The end user department is responsible for preparing the purchase requisition with the specification attached. End users report that they also prepare the solicitation documents in collaboration with Materials Management. Once the purchase order or contract is put in place, the end user department is also responsible for contract administration.

The annual procurement activity for 2010 as reported in the December 2010 monthly report is summarized in the following table:

Activity	Number of Actions 2010 Year to Date
Repair and Return PO	637
Credit Card Purchase	399
Contracts/Purchase Orders Issued under 10K	751
Contracts/Purchase Orders Issued over 10K	136
Single Bid/Formal PO/Price Analysis/Canvass	22
Single Bid/Informal PO/Price Analysis	35
Sole Source/Formal PO/Price Analysis	35
Sole Source/Informal PO/Price Analysis	40
Amendments/Informal & Formal Change of Name Agreements	52
Change Orders – Formal	50
Master Purchase Agreements	4
Release Off Master Purchase Agreement/Formal	26
Release Off of State of Illinois OR GSA	5
Re-bids (Formal)	17
Pre-Bid Conference	4
Addendums	18
Bid Extensions	13
Vendor Maintenance	106
Requisitions Received	1894
Increasing Pricing on BPO with Proper Documentation	14
Breach/Default Letter	1
Negotiating Terms & Conditions	4

DBE Program

The DBE program is included as part of the overall procurement process at Metra. The initial purchase requisition is sent to the DBE office along with the associated DBE goal. Goals are set based on the type of work envisioned and the availability of DBE firms. In cases where no goal is set, the DBE office may still notify potential DBE firms about the solicitation. In addition, Metra will not issue a notice to proceed until the prime contractor has submitted copies of all contracts in place with DBE subcontractors.

The current goal for Metra is 21% based on the last disparity study. A new study is scheduled for 2012 and the goal will be changed at that time. The current minimum project goal is 10% with most goals falling in the 15-25% range. The majority of contracts with goals are for construction and professional services. Sole source procurements and rolling stock procurements do not have goals associated with them. Metra maintains a database of all UCP certified DBE firms on their website. A separate directory is updated and printed monthly including all the firms Metra has certified.

III. SCOPE AND METHODOLOGY

Metra was chosen for a procurement system review primarily because they are a top thirty (30) grantee and their last review was in 2007. For this reason, the FTA wanted to assess the extent of compliance of the current Metra procurement system with Federal requirements. The reviewing contractor was asked to assess the overall procurement system and contract files at Metra regarding compliance with FTA Circular 4220.1F and the Master Agreement. The purpose of the Procurement System Review (PSR) was to evaluate the following:

- Policies and Procedures
- Procurement File Documentation
- Protest Procedures
- Standards of Conduct
- Contract Administration
- Efficient and Economic Purchases
- Buy America Compliance

The following representatives of Metra, FTA, and Calyptus Consulting attended the Entrance Conference held on January 24, 2011.

Reviewing Contractor and FTA:

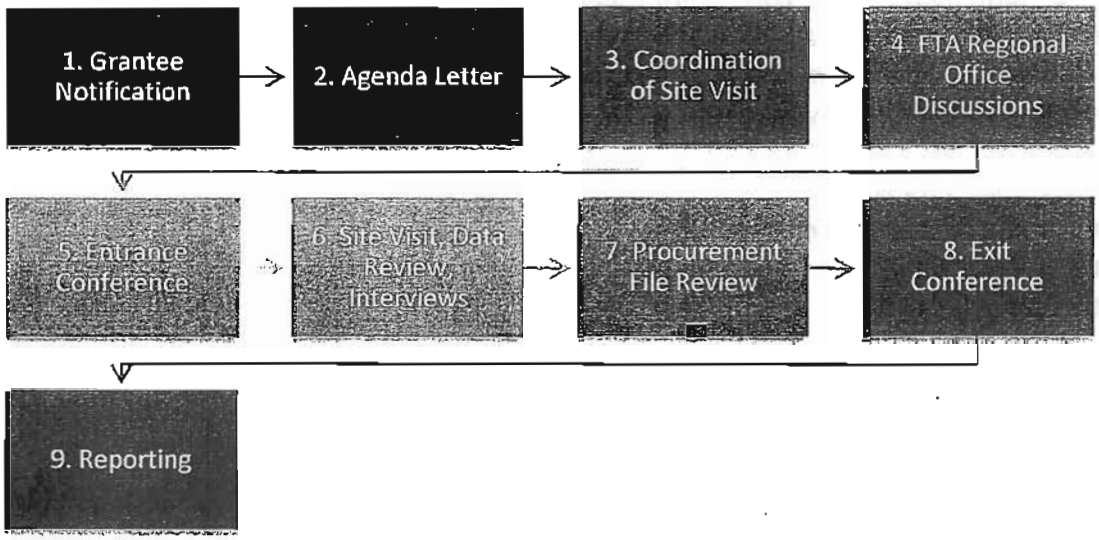
Name	*Position/Title*	*Contact Info*
George Harris	President, Calyptus Consulting Group	617-577-0041
Julie Robinowitz	Consultant, Calyptus Consulting Group	617-577-0041
Allison Gianneschi	Analyst, Calyptus Consulting Group	617-577-0041
Melody L. Hopson	FTA Region V	312-886-1611
Deborah Tilley	PMOC for FTA	215-316-8759

Grantee:

Name	*Position/Title*	*Contact Info*
Lynnette Ciavanella	Assistant Senior Division Director Capital and Strategic Planning	312-322-8022
Fred Smalarz	Senior Director Materials Management	312-322-6664
Carlos Gamboa	Department Head Professional Services	312-322-6668
David Simmons	Department Head Capital Grants	312-322-6626
Bill Tupper	Acting Executive Director	312-322-6934
Joe Lorenzini	Chief Engineer	312-322-6922
Paul A. Kisielius	Senior Division Director General Administration	312-322-6666
Terry Barnett	Acting General Counsel	312-322-6694
Eric Fernandes	Director Audit	312-322-6711
Tom Less	Chief Financial Officer	312-322-6428
Janice R. Thomas	DBE Director	312-322-6799

The purpose of the entrance conference was to provide information on the sequence of activities for the review, as noted in the following flowchart:

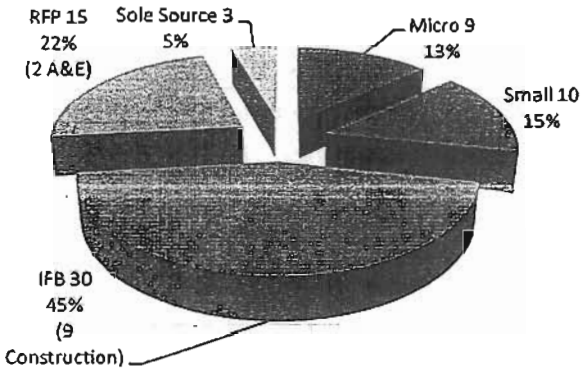
FTA Procurement System Review Process



Using the questionnaires from the FTA's PSR guide, individual interviews were conducted with executive management, finance, procurement, engineering, legal counsel, DBE program, and internal audit. In addition, information such as organization charts and policies and procedures were collected. The interviews and documentation were used to establish the framework for the file review.

Based on the data received and the assessment of the grantee's written policies and procedures, the reviewing contractor evaluated the number and types of contracts likely to be examined. Sixty-seven (67) procurements were selected for review, as indicated by procurement method below:

Procurement Type	Number of Files Reviewed
Micro	9
Small	10
IFB 9 Construction	30
RFP 2 A&E	15
Sole Source	3



During the review, the grantee was given the opportunity to provide additional documents for clarification of questions about the contract files. At the conclusion of the procurement system review, the grantee was briefed on the results and was offered the

opportunity to submit any documents for review that might clarify or eliminate areas marked deficient within the following 2 to 4 weeks before the draft final report was released. FTA Region V staff were also briefed prior to the exit conference. An exit conference was held on January 27, 2011 to brief Metra and FTA on the results of the procurement system review. The following individuals attended the exit conference:

Reviewing Contractor and FTA:

Name	*Position/Title*	*Contact Info*
George Harris	President, Calyptus Consulting Group	617-577-0041
Julie Robinowitz	Consultant, Calyptus Consulting Group	617-577-0041
Allison Gianneschi	Analyst, Calyptus Consulting Group	617-577-0041
Deborah Tilley	PMOC for FTA	215-316-8759

Grantee:

Name	*Position/Title*	*Contact Info*
Lynnette Ciavanella	Assistant Senior Division Director Capital and Strategic Planning	312-322-8022
Fred Smalarz	Senior Director Materials Management	312-322-6664
Carlos Gamboa	Department Head Professional Services	312-322-6668
David Simmons	Department Head Capital Grants	312-322-6626
Bill Tupper	Acting Executive Director	312-322-6934
Joe Lorenzini	Chief Engineer	312-322-6922
Paul A. Kisielius	Senior Division Director General Administration	312-322-6666
Terry Barnett	Acting General Counsel	312-322-6694
Eric Fernandes	Director Audit	312-322-6711
Tom Less	Chief Financial Officer	312-322-6428
Janice R. Thomas	DBE Director	312-322-6799

The overall findings from the review are summarized as follows:

Areas Not Deficient	30
Areas Deficient	24
Areas Not Applicable or Observed	6
Suggestions for Improving the Procurement System	17

The requirements and the detailed information comprising these findings make up the balance of the report. The following sections will cover areas not deficient with FTA and Federal Requirements, findings of deficiency with FTA and Federal Requirements, and suggestions for

improving Metra's procurement system. Metra must provide FTA the status of all corrective actions associated with deficiencies every quarter until the deficient findings have been closed. Metra provided comments and corrective actions pertaining to the twenty-four (24) deficient elements by letter dated March 29, 2011. Portions of the corrective actions included in this letter were included in the appropriate areas of Section V of the report. A full copy of the letter and corrective action matrix is included in Appendix M of the report.

IV. AREAS NOT DEFICIENT OR NOT APPLICABLE WITH FTA AND FEDERAL REQUIREMENTS

1. Written Standards of Conduct

Basic Requirement: Chapter III, Section 1 a. b. c. of FTA Circular 4220.1F requires that grantees maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. The code should apply to all employees involved in the award and administration of contracts. The requirement reads: "No employee, officer, agent, immediate family member or board member of the grantee shall participate in the selection award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved." The section also addresses potential conflicts, solicitation and acceptance of gifts, penalties and sanctions.

Discussion: Metra's Administrative Procedures contain provisions for Standards of Conduct, including Conflict of Interest, Gifts/Gratuities and Relations. Interviews with Metra staff and a review of available audit findings indicated no issues with adherence to standards of conduct.

3. Written Protest Procedures

Basic Requirement: Chapter VII, Section 1. a. b. of FTA C 4220.1F requires that grantees have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding protests to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.

Discussion: Metra's procedures contain written protest procedures that are in compliance with FTA requirements. The interview with the Metra procurement staff revealed that there are no current protests in process, although there have been protests over the past two years that have all been resolved.

4. Pre-Qualification System

Basic Requirement: Chapter VI, Section 1. c. of FTA C 4220.1F states that grantees may prequalify people, firms, or products for participation in procurements provided that:

- Lists used in acquiring property and services are current;
- Lists include enough qualified sources to ensure maximum full and open competition;
- The recipient permits potential bidders or proposer to qualify during the solicitation period (from the issuance of the solicitation to its closing date), as set forth in the Common Grant Rule for governmental recipients. Evaluations for prequalification, however, need not be accelerated or truncated. FTA does not require a recipient to hold a particular solicitation open to accommodate a potential bidder or proposer that submits a person, firm, or product for approval before or during that solicitation.

Discussion: Metra does not utilize a pre-qualification system.

8. A & E Geographic Preferences

Basic Requirement: Chapter VI, Section 2.a (4)(g) of FTA Circular 4220.1F states that geographic location may be a selection criterion for 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."

Discussion: The two (2) procurements reviewed indicated no evidence of geographic preferences in the A&E procurements examined.

9. Unreasonable Qualification Requirements

Basic Requirement: Chapter VI, Section 2.a (4)(a) of FTA C 4220.1F indicates that unreasonable requirements placed on firms in order for them to qualify to do business are considered to be restrictive of competition.

Discussion: Of the fifty-one (51) procurements reviewed for this requirement, none were found to be deficient.

10. Unnecessary Experience and Excessive Bonding

Basic Requirement: Chapter VI, Section 2.a (4) (e) of FTA C 4220.1F states that unnecessary experience and excessive bonding requirements are considered to be restrictive of competition.

Discussion: Of the forty-four (44) procurements reviewed for this requirement, none were found to be deficient.

11. Organizational Conflict of Interest

Basic Requirement: Chapter VI, Section 2.a. (4)(h) of FTA C 4220.1F states that an organizational conflict of interest is considered to be restrictive of competition. An organizational conflict of interest exists if:

- because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice;
- a contractor's objectivity in performing the contract work is or might be otherwise impaired; or
- a contractor has an unfair competitive advantage.

Discussion: Of the forty-four (44) procurements examined for this requirement, all forty-four (44) were found to be not applicable as there was no evidence of apparent or potential Organizational Conflict of Interest in the procurement process.

14. Geographic Preferences

Basic Requirement: Chapter VI, Section 2.a (4)(g) of FTA C 4220.1F requires that grantees conduct procurements in a manner that prohibits the use of statutorily or administratively imposed 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.

Discussion: The review indicated no evidence of geographic preferences in the fifty-four (54) procurements examined.

17. Solicitation Pre-Qualification Criteria

Basic Requirement: Chapter VI, Section 1.c (1)(2)(3) of FTA C 4220.1F requires that:

- Lists of prequalified persons, firms, or products that are used in acquiring goods and services must be current and include enough qualified sources to ensure maximum full and open competition.
- The process shall not preclude potential bidders from qualifying during the solicitation period.

Discussion: Of the forty-one (41) procurements reviewed for this requirement, none were found to be applicable. Metra does not prequalify bidders or offerors as part of its solicitation process.

20. No Splitting [Micro-Purchases]

Basic Requirement: Chapter VI, Section 3.a. (2) (b) of FTA C 4220.1F indicates that micro-purchases are those purchases under $3,000. Micro-purchases requirements follow these guidelines:

- May be made without obtaining competitive quotations.
- There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition.
- Document that the price is fair and reasonable and how this determination was derived.

This requirement ensures that a large dollar requirement is not divided into smaller segments for the sole purpose of avoiding the requirements for competition.

Discussion: Of the nine (9) procurements reviewed for this requirement, none were found to be deficient.

21. Fair and Reasonable Price Determination [Micro-Purchases]

Basic Requirement: Chapter VI, Section 3.a (2) (c) of FTA C 4220.1F indicates that micro-purchases are those purchases under $3,000. Micro-purchases requirements follow these guidelines:

- May be made without obtaining competitive quotations.
- There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition.
- Document that the price is fair and reasonable and how this determination was derived.

Discussion: Of the nine (9) procurements reviewed for this requirement, none were found to be deficient.

22. Micro-Purchase Davis Bacon

Basic Requirement: Chapter VI, Section 3.a (1) of FTA C 4220.1F indicates that Davis-Bacon prevailing wage and hour restrictions apply to construction contracts exceeding $2,000.

Discussion: Of the nine (9) procurements reviewed for this requirement, none were for construction; therefore, this requirement was not observed.

23. Price Quotations [Small Purchases]

Basic Requirement: Chapter VI, Section 3.b. (2) of FTA C 4220.1F defines small purchase procedures as those relatively simple and informal procurement methods for securing services, supplies, or other property that cost more than $3,000, but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently set at $100,000). It also indicates that price or rate quotations shall be obtained from an adequate number of qualified sources.

Discussion: Of the ten (10) procurements reviewed for this requirement, none were found to be deficient.

26. Firm Fixed Price [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c (1) (c) of FTA C 4220.1F indicates that the procurement must lend itself to a firm fixed price contract and that the selection of the successful bidder can be made principally on the basis of price.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, none were found to be deficient.

27. Selection on Price [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c (1) (c) of FTA C 4220.1F indicates that the procurement must lend itself to a firm fixed price contract and that the selection of the successful bidder can be made principally on the basis of price.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, none were found to be deficient.

28. Discussion Unnecessary [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c (1) (e) of FTA C 4220.1F indicates that no discussion with bidders is needed.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, none were found to be deficient.

29. Advertised/Publicized

Basic Requirement: Chapter VI, Section 3.c. (2) (a) of FTA C 4220.1F requires that the invitation for bids be publicly advertised and that bids be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids.

Discussion: Forty-one (41) procurements were reviewed for this requirement and none were found to be deficient. Metra documents the advertisement of all solicitations and amendments in the procurement file.

30. Adequate Number of Sources Solicited

Basic Requirement: Chapter VI, Section 3.c (2) (b) of FTA C 4220.1F requires that:

- Proposals are solicited from an adequate number of qualified sources.
- Requests for proposals are publicized.

Discussion: Of the forty-one (41) procurements reviewed for this requirement, none were found deficient.

31. Sufficient Bid Time [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c. (2)(d) of FTA C 4220.1F requires that the invitation for bids are publicly advertised and bids are solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, none were found to be deficient.

32. Bid Opening [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c (2) (e) of FTA C 4220.1F requires that all bids be publicly opened at the time and place prescribed in the invitation for bids.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, none were found to be deficient.

33. Responsiveness [Sealed Bid]

Basic Requirement:

Chapter VI, Section 3.c (2)(f) of FTA C 4220.1F indicates that a firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement, none were found to be deficient.

34. Lowest Bid [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c. (2) (f) of FTA C 4220.1F indicates that a firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Bidding documents must specify the factors, such as discounts, transportation costs, and life cycle costs that will be considered in determining which bid was lowest. The grantee is thus obliged to review lowest total cost when awarding on low price, if the aspects of this type of evaluation were specified in the solicitation.

Discussion: Twenty-nine (29) procurements were reviewed for this requirement and they were all found to be not applicable as no other financial factors besides price were specified in the solicitation.

35. Rejecting Bids [Sealed Bid]

Basic Requirement: Chapter VI, Section 3.c. (2) (g) of FTA C 4220.1F indicates that any or all bids may be rejected if there is a sound documented business reason. Reasons for possible bid rejection include lack of responsiveness to the solicitation and lack of responsibility of the offeror.

Discussion: Of the twenty-nine (29) procurements reviewed for this requirement all were found to be not applicable. In five (5) procurements, Metra rejected at least one bid and the reason for the rejection was based on a sound business reason and documented in the procurement file.

38. Sole Source If Other Award Is Inadequate

Basic Requirement: Procurements by non-competitive proposal are allowed under Chapter VI, Section 3.i(1)(b) of FTA C 4220.1F only when the contract award is inadequate under other procurement methods and at least one of the five conditions outlined below exists:

1. Item or service is only available from a single source;
2. Public exigency or emergency for the requirement will permit a delay from competitive bidding;
3. FTA authorizes non-competitive negotiations;
4. Competition is deemed inadequate; or
5. An emergency for the requirement did not permit a delay resulting from a competitive solicitation.

Discussion: Of the three (3) procurements reviewed for this requirement, none were found to be deficient.

40. Evaluation of Options

Basic Requirement: Chapter VI, Section 7.b. of FTA C 4220.1F requires that the option quantities or periods contained in the contractor's bid or offer are evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

Discussion: Forty-four (44) procurements were reviewed for this requirement. Forty-three (43) were not applicable as they did not contain option periods. One (1) procurement for the remanufacture of locomotives did contain option years and these options were properly evaluated as part of the original contract award.

43. Exercise of Options

Basic Requirement: Chapter V, Section 7.a (1) (a)(b)(c) 2 of FTA C 4220.1F requires that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

- An option may not be exercised unless it is determined that the option price is better than prices available at the time the option is exercised.

Discussion: Forty-four (44) procurements were reviewed for this requirement. Forty-three (43) were not applicable as they did not contain option periods. One (1) procurement for the remanufacture of locomotives did contain option years and these options were properly executed as Metra evaluated market pricing.

45. Advance Payments

Basic Requirement: Chapter IV, Section 2.b (5)(b) of FTA C 4220.1F indicates that FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.

Discussion: Of the forty-four (44) procurements reviewed for this requirement, none were found to be deficient. It is the policy of Metra not to use advance payments.

47. Time and Materials Contracts

Basic Requirement: Chapter VI, Section 2.c. (2) (b) of FTA C 4220.1F indicates that Time and Materials Contracts should be used only:

- After a determination that no other type of contract is suitable
- If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

Discussion: Of the forty-four (44) procurements reviewed for this requirement, all were found to be not applicable. Three (3) Metra contracts used the time and materials type. In all three (3) cases, Metra properly documented that no other contract type was suitable and included a not-to-exceed amount in the executed contract.

49. Liquidated Damages Provisions

Basic Requirement: Chapter IV, Section 2.b (6) (b) 1 of FTA C 4220.1F indicates that grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine.

Discussion: Of the forty-four (44) procurements reviewed for this requirement, eleven (11) were found to be not deficient and thirty-three (33) were found to be not applicable. In the eleven (11) contracts that included liquidated damages, Metra specified a rate per day for damages caused by the contractor for delays.

50. Piggybacking

Basic Requirement: Chapter V, Section 7.a. (2) of FTA C 4220.1F defines Piggybacking as an assignment of existing contract rights to purchase supplies, equipment, or services and requires that grantees piggybacking on another agency's contract must ensure that the original contract contained an assignability clause and that the terms and conditions of that contract meet the FTA requirements.

Discussion: Metra did not use piggybacking for any of the FTA funded procurements reviewed so this element was not observable.

51. Qualifications Exclude Price [A & E]

Basic Requirement: Chapter VI, Section 3.f. (3) (b) of FTA C 4220.1F indicates that qualifications-based competitive proposal procedures require that:

(1) An offeror's qualifications be evaluated

(2) Price be excluded as an evaluation factor

Discussion: Of the two (2) procurements reviewed for this requirement, none were found to be deficient.

53. Bid Security [Construction over $100,000]

Basic Requirement: Chapter IV, Section 2.h. (1) (a) of FTA C 4220.1F requires that the Bid Security:

- Equal five (5) percent of the bid price.
- Firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will execute contractual documents as may be required within the time specified

Discussion: Of the eight (8) construction procurements reviewed for this requirement, none were found to be deficient.

54. Performance Security [Construction over $100,000]

Basic Requirement: Chapter IV, Section 2.h. (1)(b) of FTA C 4220.1F requires that the Performance Security:

- Is executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract
- Amount is equal to 100 percent of the contract price

Discussion: Of the eight (8) construction procurements reviewed for this requirement, none were found to be deficient.

55. Payment Security [Construction over $100,000]

Basic Requirement: Chapter IV, Section 2.h. (1) (c) of FTA C 4220.1F requires that the Payment Security:

- Assures payment of all persons supplying labor and material.
- Includes required amounts as follows :
  (1) Fifty percent of the contract price if the contract price is not more than $1 million;
  (2) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
  (3) Two and a half million dollars if the contract price is more than $5 million.

Discussion: Of the eight (8) construction procurements reviewed for this requirement, none were found to be deficient.

Buy America Requirements: Rail Car/Locomotives

The purchase for the remanufacture of locomotives was reviewed for this requirement and was found to be not deficient in both the pre-award review and post-award audit.

V. FINDINGS OF DEFICIENCY IN FTA AND FEDERAL REQUIREMENTS

2. Contract Administration System

Basic Requirement: Chapter III, Section 3 of FTA C 4220.1F requires that grantees maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Discussion: Contract administration is not included as part of Metra's policies and procedures; it is only noted in the contract boilerplate terms and conditions. Metra had several key areas of concern related to contract administration. In several cases, the contract type was not clear from the contract documents. Several contracts were noted as cost-plus-fixed-fee; however, no fixed-fee was specified. Instead, these contracts are being administered as though they are time and materials of fixed-price contracts. In addition, Metra does not have a process in place to review final overhead rates on cost type contracts. Metra also had several findings of arbitrary action that were due in part to contract type issues with the contract administration system for ticket vending machines and the design of 22 Union Pacific Northern Line Bridges. In addition, out of scope changes were found during the review.

Metra should consider either replacing their cost-plus-fixed-fee contracts with time and materials contracts or specifying the fixed fee to be paid under the contract. A system for reviewing final overhead rates should also be put into place as part of the evaluation of price when making an award determination.

Best Practices: Timely execution of a definitive contract and up-to-date revisions to the contract are important to ensure control over contractor performance. Prompt and accurate documentation of contract changes is vital to equitable settlement and close-out of the contract. The FTA recommends that contract administration files routinely contain the following documentation:

- Executed contract and notice of award
- Basis of award
- Cost and price analysis
- Board of Director approvals
- History of the procurement
- Approvals or disapprovals of waivers and deviations
- Modifications and changes, including rationale for the change, determinations regarding their scope, and cost/price analysis of any price increases or decreases

Implementing a central contract administration and management function will ensure improved management of contractor performance. Contract types should be clearly stated for all contracts and contracts should be administered in the manner appropriate for the specific type of contract.

Corrective Action: Metra must respond with corrective action within ninety (90) days from the date of the final report. Training in contract administration and validation of the changes must be evidenced and provided to FTA.

Metra Response: Metra believes that a Contract Administration System is in place and that addressing the noted deficiencies within this Element No. 2, as Metra indicates it will do below, will ensure improved management of contractor performance.

Areas that were noted with deficiencies are; the contract type is not clear, there is apparent arbitrary action, and A & E type contracts lack review of overhead rates as part of the evaluation process. These are addressed and a corresponding course of action is provided in the following listed Deficient Elements.

Metra has a process in place to review the overhead rates on "cost plus fixed fee" contracts that require every contractor to submit the latest Illinois Department of Transportation (IDOT) provisionally approved or audited overhead rates. These rates are closely monitored against the Metra approved rates by the user departments to ensure consistency in the application. The contracts that do not have the approved Illinois Department of Transportation or audited rates are reviewed based on risk factors, and appropriate adjustments are made to the final contractor billings.

The implementation of time and material contracts and negotiating the overhead rates in the beginning as recommended by the FTA in this review would eliminate the issue of final overhead rate adjustments in the future. Element No. 19 further addresses Metra's course of action.

Reviewing Contractor's Response: The proposed corrective action and response to the deficiency is not adequate. The management of Cost-Plus-Fixed-Fee indirect rates goes beyond the audit of final rates. Adjustments to provisional billing rates must be done on an annual basis. Metra must provide evidence that it has reviewed provisional billing rates on an annual basis for all cost-plus-fixed-fee contracts, including the resulting differences in invoiced versus paid amounts to FTA within 30 days of the date of the final report.

Metra's contract administration system is not documented in policies and procedures. Copies of revised contract administration procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

5. System for Ensuring Most Efficient and Economic Purchase

Basic Requirement: Chapter IV, Section 1.b.c.e. of FTA C 4220.1F requires that grantee procedures provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Ensuring an economic purchase could include breaking out or combining purchases, or using annual contracts. Also lease versus buy analyses are required for applicable purchases to ensure the most economical approach.

Discussion: While Metra does have a system in place to ensure the most efficient and economic purchase through the use of a requisitioning process, there is a lack of procurement planning evidenced in the procurement files. In several cases, blanket purchase orders were put into place for the full budgeted amount rather than developing a cost build-up based on

anticipated future purchases. In addition, several cost-plus-fixed-fee type contracts did not have the fixed fee component called out in the executed contract.

Metra should base contract prices on an independent cost estimate and anticipated future use rather than approved budgets.

Best Practices: FTA's *Best Practices Manual* states that procurement plans covering several years may be an effective way to facilitate the most cost-effective purchasing management practices. The plans can identify major changes in procurement work load, and can obviate any tendency to rush procurement decisions or activities in ways that result in waste (e.g., through failure to consolidate major procurements) or risk non-compliance (e.g., through inadequate notice and non-competitive awards).

Typically the purchase of supplies will be evaluated annually based on the grantee's foreseeable needs and such factors as economic quantity breaks, warehousing space, shelf life, technology concerns, etc. Upon analysis of annual purchase patterns and quantities, the grantee may perceive that there is an opportunity to increase competition or improve pricing through consolidated purchasing, on-call contracts, piggybacking, or other contracting scenarios.

Corrective Action: Metra must respond with corrective action within ninety (90) days from the date of the final report. Training and validation of the changes must be evidenced and provided to FTA.

Metra's Response: Metra's budgets are developed with planned and analyzed material or service requirements. Metra develops requirements utilizing past, current and anticipated future needs. The reviewed files were blanket purchase orders that were released off Master Purchase Agreements (MPA). The MPA was publicly bid and had a purchase requisition, complete with an independent cost analysis. The blanket purchase orders were then released by project as funding became available.

Going forward, Metra will include in the contract file the evidence/basis for the developed/planned procurement.

Reviewing Contractor's Response: The proposed corrective action and response to the deficiency is not adequate. Contract values should be based on bona-fide expected volumes rather than the budgeted amount. Metra must provide the methodology for linking expected volumes of parts and services to the amount of any contract or modification to FTA within 30 days of the date of the final report. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

6. Procurement Policies and Procedures

Basic Requirement: Chapter III, Section 3.a of FTA C 4220.1F requires that grantees and sub-grantees use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in 4220.1F.

Discussion: Metra has procurement policies and procedures dedicated to Third Party Contracting Requirements and sets forth procurement procedures that reflect the many of FTA requirements. However, a detailed review of the Manual revealed that the following areas were not addressed:

- Requirements for the use of Time and Materials type contracts
- Tag-ons
- Prohibition on unreasonable requirements as qualifications to bid
- Prohibition on arbitrary action
- Prohibition on geographic preference for A&E contracts
- Requirement for clear and accurate specifications
- Requirements applicable to micro-purchases
- Requirements applicable to small purchases
- Procurement of Design-Bid-Build
- Procurement of Design-Build
- Requirement to complete an independent cost estimate
- Grantee's cost principles
- Bonding requirements for construction contracts
- Advance Payments
- Requirements for progress payments
- Requirements for liquidated damages
- Requirement for breach of contract remedies
- Requirement for termination clauses
- Federal statutory and regulatory requirements for contracts funded under Federal grants
- Requirements for revenue contracts

Interviews with staff noted that many of these requirements are included in the solicitation boilerplate and the file review indicated that Metra is complying with FTA requirements in many these areas. Metra should include these areas in their policies

and procedures even where they are covered by boilerplate language elsewhere in the procurement process.

Best Practices: The Grantee's policies and procedures guide users and contracting/purchasing staff in the proper execution of material and service acquisitions. A review of Circular 4220.1F will indicate the areas required to ensure compliance with Federal Regulations.

Corrective Actions: To achieve compliance, Metra must respond within ninety (90) days from the date of the final report and provide a detailed update to the Procurement Manual addressing these areas. Metra must also provide evidence of adequate training and independent audit evidence that procedures are being followed consistently.

Metra's Response: The review indicated that Metra is complying with FTA requirements as is provided in Metra's solicitation boilerplate.

Metra will include the FTA requirements in our policies and procedures. Estimated 90 days to complete.

Reviewing Contractor's Response: The proposed corrective action and response to the deficiency is not adequate. There were many aspects of the FTA procurement requirements that were not documented in policies and procedures, which may result in current and future deficiencies. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 90 days of the date of the final report.

This was submitted!

7. Independent Cost Estimates

Basic Requirement: Chapter VI, Section 6 of FTA C 4220.1F requires that: "... in connection with every procurement action ... grantees must make independent estimates before receiving bids or proposals." Establishing a cost estimate in advance of the offer using a method independent from the perspective of offerors ensures a clear basis for analysis of cost or price, and provides essential procurement and financial planning information. Independent cost estimates are made by qualified engineering and functional staff who have first-hand knowledge of the commodity or service being purchased. The cost estimate is developed based on product knowledge, experience, and market status, and is used in performing price and cost analysis.

Discussion: Of the fifty-five (55) procurements reviewed, ten (10) were found to be deficient in this area. While Metra does include an estimate on their requisition, this process was not consistently followed. In addition, back-up documentation for the estimates listed on the requisition was not evident in the procurement files and Metra's policies and procedures do not require independent cost estimates for the sealed bid method of procurement.

Best Practices: Best Practices for obtaining independent cost estimates include:

- Estimates are received from design firm or in-house technical personnel for construction work,
- Published price lists or past pricing with inflation factors are analyzed, and
- Independent third-party staff member (not impacted by final procurement) develops these estimates.
- Use of a standard form, such as the template that appears in Appendix D is recommended.

Corrective Actions: Adherence to the requirement for independent cost estimates must be monitored and enforced consistently. To achieve compliance, Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of training and evidence of independent audit confirming that procedures are being followed consistently.

Metra's Response: As part of Metra's Pre-Award Activity, and listed on Metra's Checklist is, "Receiving an independent Cost Estimate of Contract/Purchase Order Valuation." Metra uses this checklist as part of our contract file administration.

Going forward emphasis will be placed upon the appropriate staff to improve supplying adequate supporting documentation.

Reviewing Contractor's Response: The proposed corrective action and response to the deficiency is not adequate. Evidence of the required independent cost estimate was not present in many of the reviewed procurement files. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

12. Arbitrary Action

Basic Requirement: Chapter VI, Section 2.a (4)(j) of FTA C 4220.1F indicates that any arbitrary action in the procurement process is considered to be restrictive of competition. Arbitrary actions can occur in non-competitive as well as competitive procurements. Proper file documentation can help evaluate whether or not an arbitrary action occurred.

Discussion: This element is deficient based on five (5) procurements completed by Metra as follows:

- In one (1) purchase for a revenue accounting system, the Brooks Act method of procurement was used inappropriately. The original solicitation documents and Best and Final Offer (BAFO) documents stated that cost was an evaluation criteria. After the BAFO was received, the Brooks act method was implemented per the direction of the Executive director and award was made without considering cost.
- In one (1) procurement for QA oversight and general program support the details of the scoring methodology were not documented to support that the awarded contractor did receive the highest score.

- In one (1) procurement for ticket vending machines was documented as being a cost-plus-fixed-fee type contract; however, the price was stated as a firm-fixed-price in the executed contract.
- In one (1) procurement for the design of 22 Union Pacific Northern Line Bridges, there were several no cost time extensions granted. At the end of the project, an increase in the contract dollar value was added to cover these time extensions with no supporting documentation.
- In one (1) A&E procurement for manufacturing engineering in the rehabilitation of 176 bi-level passenger railcars, pricing was requested from all firms despite the use of the Brooks Act method of A&E procurement being specified in the solicitation documents.

Best Practices: Consistency in the procurement process is the best method of obtaining compliance for arbitrary action. In addition, concerns regarding arbitrary action can be eliminated with proper file documentation, such as bid opening records, bid comparison sheets, award decision documentation and negotiation memoranda. The grantee should ensure that the procurement process includes documentation that accurately portrays what occurred and that approvals are made to evidence proper decision-making.

Corrective Actions: Consistent and proper file documentation can help evaluate whether or not an arbitrary action occurred. To achieve compliance, Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The five (5) procurements that were identified as deficient all received multiple bids or proposals, and the respective contract files did contain information about the process that was used for each solicitation.

Metra will ensure that the procurement process will be consistent and will use proper file documentation to avoid arbitrary action. It will consist of proposal tabulation sheet(s) for RFP's and bid tabulation sheet(s) for IFB's. In addition, all award decision making documentation will consist of scoring sheet(s) and negotiation documentation, if required, for all RFP's and technical evaluation for IFB's. See Element No. 42 for additional detail to contract file content and organization.

Reviewing Contractor's Response: The proposed corrective action and response to the deficiency is not adequate. Any arbitrary finding is a serious one since the underlying documentation is not available to support the award decision or the procurement had fatal flaws in the process. In the case of the QA oversight contract, the deficiency was egregious. There was no support documentation as to the reasons why the awardee was rated so much higher than the other firms. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report. FTA will conduct a separate review of the QA oversight contract to determine whether it is eligible for federal funds.

13. Brand Name Restrictions

Basic Requirement: Chapter VI, Section 2.a (3)(4)(f) of FTA C 4220.1F indicates that specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its' salient characteristics is considered to be restrictive of competition.

Discussion: Of the fifty-one (51) procurements reviewed, forty-three (43) were found to be not applicable, one (1) was found to be not deficient, and seven (7) were found deficient. The seven (7) procurements deemed deficient included a statement that equals may be offered by suppliers; however, the salient characteristics were not noted.

Best Practice: The goal of the solicitation process is to determine the best buy. By specifying brand names, competition can be limited. Metra should work with requisitioners to determine whether brand names can be deleted from design or performance specifications improving the opportunity for full and open competition. Should the brand name be required, the designation "or equal" will allow potential bidders to propose alternate brand names. Procurement personnel must predetermine those salient physical and functional characteristics of the brand name product in order to compare the proposed alternatives.

Corrective Action: Consistent and proper file documentation can help evaluate whether or not an arbitrary action occurred. To achieve compliance, Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Of the fifty-one (51) procurements reviewed, forty-three (43) were found to be not applicable, one (1) was found to be not deficient, and seven (7) were found deficient. Please note that the FTA/IDOT Addendum for Material Procurements., Page 1, Item No. 3 states: "Approved Equals and Brand Names. Where a feature, component, or item is specified by brand name in the Specifications, the words 'or Approved Equal' are implied. All approvals and request for approvals of proposed Approved Equals must be in writing. Specification by brand name of components or equipment in the Specification shall not relieve Contractor from its responsibility to design and construct the Equipment and perform the work in accordance with the general performance requirements of the Specifications and these General Provisions."

The seven (7) procurements deemed deficient included a statement that equals may be offered by suppliers; however, the salient characteristics were not noted. The Materials Management Department will return purchase requisitions to the requisitioning departments when they do not list the salient characteristics. Following the FTA review this process was immediately implemented and being followed by staff.

Reviewing Contractor's Response: The proposed corrective action is acceptable. However, copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

15. Contract Term Limitation – Rolling Stock

Basic Requirement: Chapter IV, Section 2.e (10) of FTA C 4220.1F requires that grantees do not enter into any contract for rolling stock and replacement parts with a period of performance exceeding five (5) years inclusive of options.

Discussion: Of the fifty-five (55) procurements reviewed for this requirement, forty-five (45) were found to be not applicable, nine (9) were not deficient, and one (1) was found deficient. The contract for manufacturing engineering in the rehabilitation of 176 bi-level passenger railcars was for a six (6) year period of performance. There was no documentation to indicate that FTA had authorized the longer contract period.

Best Practices: Grantees are authorized to procure rolling stock or other supplies and services by a number of methods, including buying on an annual or on an as-needed basis, and also on a multi-year basis. FTA requirements should be incorporated into the procurement process to provide for the need to monitor contracts having the potential for more than a five year period of performance and to ensure that all procurements have closed-ended periods of performance. Grantees should also provide training in this area so that all involved in the purchasing process will be aware of this requirement. Grantees should establish a practice of regularly reviewing contracts for expiration (bid calendars serve as excellent tools for this purpose) and ensure that adequate time exists for re-procurement processes to comply with this requirement.

Corrective Action: All contracts for rolling stock and replacement parts must have a period of performance for placing orders that does not exceed five (5) years inclusive of options. Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: There was a single contract found to be deficient regarding this Element. It was a six (6) year contract for the "Kitting" of material purchased by Metra and delivered to the contractor for design & engineering of each kit, i.e., the contractor designed and engineered each kit for Metra. Metra then competitively bid out all material for the kits needed for the car rehab program(s). Metra estimated the duration for kitting the car rehab material to last six (6) years.

Metra will modify the subject contract to conform within the five (5) year period.

Reviewing Contractor's Response: The Metra corrective action is not adequate. This is not the only element for which this procurement was deficient. The underlying procedure and approval process did not ensure that a contract for rolling stock exceeded 5 years was signed by Metra.

Change Contract procedures to conform to 5 yrs.

FTA will conduct a separate review of this contract to determine whether it is eligible for federal funds. The misuse of the Brooks Act for this procurement as well as the result of deficiencies in other elements of the PSR was egregious. In addition, proposals were re-evaluated after presentations and this process was not communicated to prospective contractors. Evidence of training must be provided to FTA regarding the requirement to limit the ordering period of rolling stock to a maximum of five years. All of these actions must be completed within 30 days of the date of the final report.

16. Written Procurement Selection Procedures

Basic Requirement: Chapter III, Section 3.a of FTA C 4220.1F requires that grantees have written selection procedures for procurement transactions. As stated in the Circular "all solicitations shall identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals." This ensures that procurements are awarded in a fair and equitable manner.

Discussion: Forty-one (41) procurements were reviewed for this requirement. Thirty-two were not deficient and nine (9) were found to be deficient. Metra has a process in which proposals are rescored after presentations are completed; however, that process is not stated in the evaluation process provided in the solicitation documents for the RFP method of procurement. In addition, Metra uses a consensus scoring process rather than having an individual score for each proposal from each member of the evaluation committee resulting in a lack of transparency throughout the evaluation process.

Metra should alter the evaluation process such that each member of the evaluation committee scores each proposal. These scores should then be added together to determine the final score. The evaluation committee may meet to discuss why members scored proposals the way they did; however, documentation of such discussions should be included in the procurement record.

Best Practices: The grantee should establish written selection procedures in every solicitation. Once proposals are received, evaluators should follow these criteria when considering the proposals submitted and document the evaluators' findings. Documentation for all procurements should be maintained in a central location regardless of award amount. The request for quotation for any small purchase should contain language identifying the basis for award (such as lowest priced responsive offer) and a copy of it should be included in the file.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The deficient files refer to Metra's RFP evaluation process. Metra does have established evaluation processes. As noted in the review, proposals are re-scored after interviews. The review noted that this particular aspect of the process is not made apparent or clear to proposers.

Must show that it was revised in the RFP

Following the FTA review, staff immediately included in all RFP Evaluation Processes that if interviews are to be conducted, the proposer presentation may be re-scored.

Reviewing Contractor's Response: This corrective action is acceptable, but copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

18. Award to Responsible Contractors

Basic Requirement: Chapter VI, Section 8.b of FTA C 4220.1F requires that grantees make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Discussion: Of the forty-four (44) procurements reviewed, twenty-seven (27) were found to be deficient and seventeen (17) were found to be not deficient. Metra does have a standard process in place to indicate on the bid tabulation sheet that contractor responsibility and the Federal excluded parties list have been checked. In the twenty-seven (27) procurements found to be deficient, this documentation was not provided on the bid tabulation sheet.

Best Practices: There are many proven methods to determine whether or not a supplier is responsible, including:

- Visiting the supplier's facility;
- Examining prior work performed by the supplier;
- Checking financial and client references;
- Evaluating prior performance reports; and reviewing the Federal debarred/suspended contractor listing.

The consistent usage of a standard form, such as the template provided in Appendix E (Responsibility Determination Form), would ensure that the responsibility determination is performed completely and consistently.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: As noted in the review, Metra does have a standard checklist process in place on the bid tabulation form regarding the prospective contractor's responsibility and the Federal excluded parties list. The review noted deficiencies in informal procurements. Prior to this review all bid tabulation sheets for formal bids (over $10,000.00) were properly filled out, including debarment.

Following the FTA review and effective immediately, all bid tabulation sheets for formal and informal bids (under $10,000.00) will be checked and initialed by the buyer for

responsibility and the Federal excluded parties list. This process is in place and being used by the appropriate staff.

Reviewing Contractor's Response: This corrective action is acceptable but copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

19. Sound and Complete Agreement

Basic Requirement: Chapter III, Section 3.b. of FTA C 4220.1F requires that all contracts include provisions to define a sound and complete agreement. It should include proper specifications that allow for "administrative, contractual, or legal remedies . . . and a termination for cause and for convenience" clause.

Discussion: Of the forty-four (44) procurements reviewed, two (2) were found to be deficient. In both cases the contract documents do not clearly indicate the contract type. In one (1) procurement for blanket signal engineering services the contract does not specify whether it is firm-fixed-price or cost-plus-fixed-fee. In another procurement for manufacturing engineering in the rehabilitation of 176 bi-level passenger railcars on a cost-plus-fixed-fee basis, the contract does not include the fixed-fee component of the contract value.

Best Practices: All procurements above the micro-purchase threshold should be definitized by a written contract approved by appropriate legal and procurement personnel. The grantee may use checklists to remind involved personnel of the contract clauses required by the FTA in the Circular and the Master Agreement.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Two (2) contracts were found to be deficient. In both cases the contract documents do not clearly indicate the contract type.

The contract for the blanket Signal Engineering Services is a "not to exceed $500,000.00" contract. The contract specified "total actual costs and fixed fee." Exhibit 5 in the contract is the Employee Compensation Schedule, listing the hourly rates for the contractor's staff, audited rate of 147.5%, and a profit rate of 10%. The file contains supporting documentation for the cost of task assignments. Metra's standard 4400 Cost Form indicates that the costs match the rates and fees listed on Exhibit 5.

The file for the Material Kitting & Manufacturing Engineering of 176 Bi-Level Passenger Cars contains Exhibit 2, Price Proposal. The Exhibit indicates the fixed fee value will include the labor cost and the Burden Rate is 10% of the fixed labor cost.

As discussed during the review pertaining to A & E blanket type of contracts, Metra did not negotiate the fixed hourly or burden rates prior to contract approval. The actual

negotiation occurred at the time a "task" was assigned, and then estimated hours were included along with the hourly and burden rate.

Following the FTA review, staff immediately incorporated the negotiation process to establish the fixed hourly rates and burden rate prior to any contract approval for all blanket fixed-fee type A & E contracts.

Reviewing Contractor's Response: The corrective action is not adequate. In the deficient contract documents, the cost-plus-fixed-fee type of contract is not denoted and the estimated costs and fixed fee is not included in the contract or revised when tasks or changes are implemented. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report. FTA will conduct a separate review of the Blanket Signal Engineering and the Material Fitting contracts to determine whether these contracts are eligible for federal funds.

24. Clear, Accurate and Complete Specifications

Basic Requirement: Chapter III, Section 3.a.(1)(a)(b)(d) of FTA C 4220.1F requires that grantees have a clear and accurate description of the technical requirements for the material, product, or service to be procured. Complete and accurate specifications are required to ensure that all potential bidders are given equal knowledge on grantee's requirements. Moreover, Section 8.c. (1) also indicates that a clear and adequate description of the product for services must be included in all solicitations.

Discussion: Of the fifty-four (54) procurements reviewed, seven (7) were found to be deficient. The end user develops the specification at Metra and in most cases the specifications meet the FTA requirements. In seven (7) of the procurements the specification either listed only manufacturer part numbers or generic, bulleted, lists of the tasks to be performed. For example, an engineering contract listed tasks such as "provide support" and "assist" with no additional details. Metra should include a detailed description of all requirements in enough detail to allow contractors to propose solutions and increase competition.

Best Practices: The FTA Best Practices Manual suggests that the specifications describe the grantees needs "as completely, clearly, accurately, and unambiguously as possible" in order to prevent the shipment of inadequate goods, and to prevent claims arising from errors. The grantee must ensure that specifications are clearly written and reviewed by enough people to ensure completeness and to insist that all orders and contracts contain clear specifications.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Of the fifty-four procurements reviewed, seven (7) were found to be deficient. Metra's response is partially addressed in Element 13 above, relating to "Brand Name" reference and listing salient characteristics.

The user departments will be tasked with "beefing-up" specifications and staff will hold pre-bid meetings, when appropriate, to address any questions that potential vendors may have. Staff will also continue to return purchase requisitions that are not complete back to the requisitioning department.

Reviewing Contractor's Response: This corrective action is acceptable but copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

25. Adequate Competition- Two or More Competitors

Basic Requirement: Chapter VI, Section 3.i (1)2.a. of FTA C 4220.1F indicates that adequate competition exists when two or more responsible bidders are willing and able to compete effectively for the business.

Discussion: Of forty-one (41) procurements reviewed, three (3) were found to be deficient. A procurement for elevator design and installation services received only one bid; a canvass of other potential firms revealed that several chose not to bid due to minimum qualifications that were included as an amendment to the solicitation. Another procurement for rail grinding services indicated that the previous award was made on the basis of a single bid in the solicitation documents. This may have prevented firms from participating. A procurement for IT system storage and hardware received a single bid due to a brand name being specified in the specifications. Metra does have an effective process in place to canvass suppliers when only one bid is received.

Best Practices: Efforts should be made to re-bid those items where only one supplier had submitted a bid under a specific IFB. In those instances where the judgment is made that there are no reasonable alternate sources, a single source justification must be included in the file describing the reasons for that determination. See the form attached as Appendix G for an example of a Non-Competitive Procurement Justification. Further, the grantee should pre-qualify suppliers so that an ample number of suppliers bid on its requirements. See the form attached as Appendix F to assist in aiding Metra in making decisions when only one bid or proposal is received.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Three (3) files were noted as deficient. In all three solicitations, specifications were very specific and detailed. As was noted in the review, Metra has an effective process in place to canvas suppliers when only one bid is received. Additionally, staff does review the solicitation process and canvas responses to determine if there is adequate competition or that a single source is justified.

Metra concurs, a single source justification will be included in the file at the conclusion of the canvas review, or ii will be noted that Metra will re-solicit bids/proposals based upon the canvas results.

Reviewing Contractor's Response: Metra's corrective actions are not adequate. In the noted procurements, there was information included in solicitation documents that affected the number of bids received. The corrective action should address the process to ensure that solicitations do not include this prohibitory language. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

36. Evaluation [RFP]

Basic Requirement: Chapter VI, Section 3.d (2)(b)(d) of FTA C 4220.1F requires that:

- All evaluation factors are identified along with their relative importance.
- Grantees have a method in place for conducting technical evaluations of the proposals received and for selecting awardees.

Discussion: Of the twelve (12) procurements reviewed for this requirement, three (3) were found to be deficient. Metra specified the evaluation factors along with their relative importance in the majority of the solicitations reviewed; however, in two (2) cases, there was no statement that the criteria were listed in order of importance. In one (1) procurement for manufacturing engineering in the rehabilitation of 176 bi-level passenger railcars the evaluation criteria were not followed when making the award. Metra's procedures for conducting solicitations are in line with the FTA requirements. Metra should ensure the consistent application of these procedures.

Best Practices: The chosen method of solicitation must take into account factors other than price alone. Price must always be a factor in establishing the competitive range, unless the work envisioned is Architectural and Engineering services. For construction type procurements where design must occur during the performance period, either a design-build or two-step procurement method should be used. The intention to use a specific method of procurement must be stated in all solicitation documents in order to provide clear expectations from potential contractors.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra does have established evaluation processes.

Going forward, the Evaluation Criteria "in order of importance" will be noted starting immediately. This process has already been implemented. The appropriate staffs in Professional Services have already reviewed the procedure.

Reviewing Contractor's Response: Metra's corrective action is not adequate. The corrective action should be focused on ensuring that this does not happen again. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report. As noted previously in this section, FTA will conduct a separate review of this contract to determine whether it is eligible for federal funds.

37. Price and Other Factors [RFP]

Basic Requirement: Chapter VI, Section 3.d (2)(e) of FTA C 4220.1F indicates that:

- Awards made to firm whose proposal is most advantageous to the grantee's program with price and other factors considered
- Grantees may award to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value." "Best value" language must be in the solicitation.

Discussion: Of the twelve (12) procurements reviewed for this requirement, four (4) were found to be deficient and eight (8) were found to be not deficient. Deficient findings all relate to the improper use of the Brooks Act method of procurement. In some cases Metra used the Brooks Act for services that were not related to A&E, while in other cases the firms were correctly evaluated excluding price but were then given a budgeted amount as the contract award with no record of price negotiations.

Best Practices: The Grantee should ensure that the A&E method of procurement be used only when construction work is anticipated. Decision criteria should be established to identify when a purchase is an A&E construction method or any other professional service. Documentation of the award justification based on price and other factors should clearly identify the key considerations.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra uses the Brooks Act method of procurement for A & E and construction management type contracts. The Request for Proposal for these contracts lists the number of contracts that will be awarded and the "not to exceed" amount for each type of contract. The contract award may be for signal design, bridge design, or construction management, etc.

Metra concurs and Element 19 above addresses how future A & E typo contracts will be negotiated prior to contract award for fix-fee contracts.

In Element 37 the Reviewer indicates that Metra used the Brooks Method improperly for the non A & E services that were identified during the review. In these contracts, cost was an element of the evaluation; however, the technical portion was opened, evaluated, and scored first, and then the cost portion was opened and evaluated. Finally, the two portions,

technical and cost, determined the total score for the respective proposer. The reason justifying keeping cost separate was so that the cost portion would not influence the evaluators' analysis of the technical portion of the proposal.

Reviewing Contractor's Response: Metra's response is not adequate. Metra used the incorrect method of procurement, and should create a corrective action that prevents re-occurrence in the future. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report. FTA will conduct a separate review of the contract for the manufacturing and engineering of the 176 bi-level passenger railcars to determine whether this contract is eligible for federal funds.

39. Cost Analysis Required [Sole Source]

Basic Requirement: Chapter VI, Section 6.a of FTA Circular 4220.1F confirms that a cost analysis must be obtained when the offeror submits elements (labor hours, overhead, materials, etc.), when the price competition is inadequate, when there is only a sole source available, or when an order is changed. The recipient is not obligated to obtain a cost analysis where price reasonableness of the proposed contracts can be justified on the basis of a catalog or market price of a commercial product sold in large quantities to the general public, or where law or regulation have established price.

Discussion: Of the three (3) procurements reviewed for this requirement, all three (3) were found to be deficient. The file documentation for the procurement of door closers and anti-freeze devices contained a price analysis but did not have an analysis of profit or fee. A cost breakdown was provided by the supplier in a procurement for the relocation of Demarc but no analysis was conducted. A final procurement for fleet management services utilized GSA pricing which is not allowable when using FTA funds.

Best Practices: The grantee may consider the following Best Practices in cost analysis--

- Verification of cost or pricing data and evaluation of cost elements
- Evaluation of effect of offeror's current practices on future costs
- Comparison of costs proposed with actual or previous cost estimates
- Verification of offeror's costs with Federal cost principles

A standard form, such as the one in Appendix H may be used to document compliance with this requirement.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Of the three (3) procurements reviewed for this requirement, all three (3) were found to be deficient. The purchase order file for door closers and anti-freeze devices did contain a price analysis and Metra's Audit Department cost analysis summary (see

attached Element 39). Metra's Audit Department conducted an independent evaluation of price as the vendor declined to provide costs.

The third purchase order identified for Fleet Maintenance was inadvertently coded incorrectly (input error), which identified it using Federal funds. If is not funded with Federal funds and the funding source has been corrected. See Element No. 38.

It is Metra's practice to perform a cost analysis on all federally funded sole source procurements. The appropriate staff has reviewed the required process to ensure its inclusion in the contract file.

Reviewing Contractor's Response: Metra's response is not adequate as it did not address the deficiency. Metra does not have an adequate process to conduct cost analysis and the corrective action does not address how cost analyses will be improved to be compliant in the future. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

41. Cost or Price Analysis

Basic Requirement: Chapter VI, Section 6.a. of FTA C 4220.1F requires that grantees perform a cost or price analysis in connection with every procurement action, including contract modifications.

Discussion: Fifty-three (53) procurements were reviewed. Six (6) were found to be not deficient, and forty-seven (47) were found deficient. Metra does not have a consistent process in place to complete a cost or price analysis. While several good examples of price analysis were found, the documentation of this analysis was missing in the majority of the files reviewed.

Best Practices: The grantee must ensure that all contract specialists understand the elements of price analysis, and that files reflect the use of such analysis to show a logical determination of price reasonableness. Sources of information that are available to conduct a price analysis include:

- Comparisons with other competitive proposals
- Previous contracts
- Catalog or market prices
- Historical prices and trending
- Independent cost estimates

One method to record this analysis is through use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so such as catalog or market prices offered in substantial quantities to the general public, regulated prices (e.g., for many utilities purchases), or comparison with recent prices for similar goods and services.

The grantee should conduct a more thorough analysis of price variances on bids, examining variances from the independent estimate as well as the differences between bids recorded. The form included as Appendix I provides an example of price analysis factors to be considered.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Fifty-three (53) procurements were reviewed. Six (6) were found to be not deficient, and forty-seven (47) were found deficient.

While the review did find some good examples of price analysis, the documentation of this analysis was missing in the majority of the files reviewed.

Metra concurs and will implement the recommendation and modify Metra's bid tabulation document sheet to include a statement, based upon staff's analysis, that the price quoted by the lowest responsive and responsible bidder is fair and reasonable based on competitive bids. Additionally, the price/cost analysis requirement is included in the contract file checklist. The process has been implemented with the appropriate staff.

Accepted

Reviewing Contractor's Response: The corrective action is adequate but copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

42. Written Record of Procurement History

Basic Requirement: Chapter III, Section 3.d (1) of FTA C 4220.1F requires that grantees maintain records detailing the history of each purchase. At a minimum, the following must be included in the procurement files:

- The rationale for the method of procurement;
- Selection of contract type;
- Reasons for contractor selection or rejection;
- The basis for contract price.

This requirement applies to all procurements except micro-purchases.

Discussion: Of the fifty-four (54) procurements reviewed, fourteen (14) were found to be deficient. In general, there is a lack of file organization at Metra and minimal documentation on procurement planning activities. In the fourteen (14) procurement files found to be deficient, the reviewing contractor was unable to determine the reason for the contractor selection or the basis for the contract price.

Best Practices: The *Best Practices Manual* states "a properly documented procurement file provides an audit trail from the initiation of the requirement to the beginning of the contract." In addition, a well-documented file can be interpreted on its own, without any

assistance or additional information. Other agencies use periodic internal audits of the files and the use of checklists to ensure compliance. The grantee could modify its Purchase Summary to list the required elements of the Circular, such as the solicitation method and contract type (sealed bid- fixed price, competitive proposal- fixed price, competitive proposal- time and materials, or sole source).

The grantee should initiate a method of central tracking of their procurement activity. A policy describing the need for important file documentation to be captured in purchasing files should be established. Training should be provided to all personnel involved in the procurement process to ensure that proper procedures are being followed. In addition, the use of checklists would facilitate this process. The *Best Practices Procurement Manual* recommends the following procurement file documentation where appropriate:

- Purchase request, acquisition planning information and other pre-solicitation documents
- Evidence of availability of funds
- Rationale for the method of procurement (negotiations, formal advertising)
- List of sources solicited
- Independent cost estimate
- State of work/scope of services
- Copies of published notices of proposed contract action
- Copy of the solicitation, all addenda and all amendments
- Liquidated damages determination
- An abstract of each offer or quote
- Contractor's contingent fee representation and other certifications and representations
- Contracting Officer's determination of contractor responsiveness and responsibility
- Cost or pricing data
- Determination that price is fair and reasonable including an analysis of the cost and price data
- Required internal approvals for award
- Notice of award
- Notice to unsuccessful quoters or offerors and record of any debriefing
- Record of any protest
- Bid, Performance, Payment or other bond documents and notices to sureties
- Required insurance documents, if any, and
- Notice to proceed

See Appendix J for examples of file checklists to be made for different contracting methods and change orders.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Of the fifty-four procurements reviewed, fourteen (14) were found

to be deficient. In general, there is a lack of file organization at Metra and minimal documentation on procurement planning activities. In the fourteen (14) procurement files found to be deficient, the reviewer was unable to determine the reason for the contractor selection or the basis for the contract price.

Metra's course of action is as follows:

A "Contract/Purchase Order File Content Check List Form for Contracts/Po's Over $10,000. 00" is in the file for all contracts solicited and awarded using the IFB or the RFP process. The checklist consists of Date, Initials (Buyer), and Activity of the following:

Pre-Award Activity

1. Requested Independent Cost Estimate of Contract/Purchase Order Valuation
2. Received Independent Cost Estimate of Contract/Purchase Order Valuation
3. Copy of Requisition
4. Invitation for Bids Memorandum with Pre-bid summary
5. Certified Copy of Invitation for Bids
6. Internal Request for Quotation Checklist to Appropriate Using Department
7. Addenda and/or other External Correspondence/Internal Memoranda
8. Applicable Exhibits Included
9. Bid/Proposal Tabulation, Blue Copy of P.O. or Original Contract
10. Received Evaluation Form IFB/RFP Evaluation Loner and Supportive Selection Documentation sent to/from Using Department
11. Internal/External Letters/Memoranda, i.e. DBE Correspondence, Short List, Insurance
12. Protest Notification Forward to Grants Department (If Applicable)
13. Protest Resolution Forward to Grants Department (If Applicable)
14. 4400 Form for A & E/Professional Services Contract
15. Price/Cost Analysis (When Required)

Post Award Activity

1. Performance Labor Material Bond (Construction Only)
2. Notice to Proceed/Vendor Acknowledgment
3. Contracts Completion Form
4. Contract/P.O. Complete/100% Received

The file also has a list of vendors solicited for an IFB or RFP. The requisition is reviewed by Metra's Grants Department to assure that funds are available prior to processing the IFB or RFP solicitation.

Additionally, see the attached instructions for the Organization of Contract File Folders, Operating Files and Purchase Orders (Capital and Operating). This process is in place and being used by the appropriate staff.

Reviewing Contractor's Response: Metra's response is not adequate because it does not address the deficiency. For example, the proposed checklist did not include the required

determination of the procurement method and the contract type in Pre-Award activities. Copies of revised procedures and processes, copies of proposed checklists by procurement method, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

44. Out of Scope Changes

Basic Requirement: Chapter VI, Section 3.i. (1)(b) of FTA C 4220.1F indicates that a contract change that is not within the scope of the original contract is to be considered a sole source procurement. The grantee must justify why an amendment was the only feasible course of action, and must comply with FTA requirements for cost analysis and profit negotiation.

Discussion: The reviewing contractor noted three (3) contract changes in the procurements reviewed that were out of scope and were not treated as sole source procurements. In the installation and service of core routers the contract value was increased from $120,000 to $220,000, an increase of 83%. A procurement for ticket vending machines increased the number of machines from 14 to 29; there was no documentation that these increases were evaluated. In the procurement for an ADA station upgrade, the installation of bike racks was added to the scope of work without the proper sole source justification.

- Best Practices: A change order that is not within the scope of the original contract is considered a cardinal change or a sole source procurement by the FTA. Significant case law exists to support the definition(s) of out of scope changes. If the modification is so substantive that it changes the complexion of the deal, it is out of scope. If the modification might have been fairly and reasonably within the contemplation of the parties at the time the contract was signed it may be in scope. Questions to be asked to warn of out of scope changes are:
- Is the end item or service substantially changed (by an individual modification or as a cumulative effect of several modifications)?
- How does the change price compare to the contract price? Is it substantial?
- What resources are required to accomplish the new work? A different set of resources signals an out of scope change.
- Would the competitive factors be different if the change were proposed as part of the original contract?
- Would different firms have bid?

See Appendix K for an example of a form to be used to assess each contract change.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The review noted three (3) contract change orders in procurements that were out of scope and were not treated as sole source procurements.

The change order for the installation and service of core routers consisted of extending the contract completion date by one year at the same pricing, and to increase the value of the contract for the work performed during this period. The fees of the original contract remained the same during the extended period of performance.

Metra concurs and the processing for the additional routers should have been done as a sole source.

In reviewing the ticket vending machine file for the change order, Metra found that the number of machines was increased from 15 to 29, and the file has documentation dated March 26, 2010 from Metra's Audit Department. The documentation states that the "quoted price for the Change Order appears reasonable." The additional 14 vending machines were ordered at the direction of the Executive Director.

Metra concurs and the processing for the additional machines should have been done as a sole source.

The change order for the ADA improvements at the BNSF - Route 59 station upgrade consisted of widening the existing platform, adding additional lighting, sidewalk widening, landscaping, and replacing an existing bike rack that was in place prior to the improvements. The bike rack was removed for the improvements but was damaged in the process and was not salvageable.

Metra concurs and the processing for the bike rack should have been done as a sole source.

Reviewing Contractor's Response: Metra's response is not adequate because it doesn't address the deficiency. There is no process, procedures, rules, or checks and balances proposed to ensure that sole source amendments are properly reviewed. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

46. Progress Payments

Basic Requirement: Chapter IV, Section 2.b. (5) (c) of FTA C 4220.1F indicates that progress payments are allowed if:

(1) They are only made to the contractor for costs incurred in the performance of the contract.
(2) Adequate security is obtained (such as taking title, letter of credit or equivalent means)

Discussion: Forty-four (44) procurements were reviewed for this requirement. Twenty-five (25) were not applicable, ten (10) were not deficient, and nine (9) were found deficient. Metra has two different standard clauses for progress payments; in one version of the clause the provision that title will transfer to Metra upon payment is included, in the other version, this language is missing. Metra should ensure that all contracts containing progress payments include the provision that title for the completed work will transfer to Metra upon payment.

Best Practices: The grantee should develop "boilerplate" payment clauses detailing the FTA requirements that are inserted into any contract containing a provision for progress

payments. Such clauses should also be part of any purchase order or contract containing provisions for progress payments in advance of project completion.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The deficient files were lacking the statement that "title for the completed work will transfer to Metra upon payment." Metra's construction contracts do contain the appropriate language. However, the deficient files lacking the appropriate language were procurements under $10,000.

Metra concurs and will notify all bidders that Federal statutory and regulatory applicable requirements do apply for federal funded purchases. Additionally, required clauses will be maintained in the respective procurement file. This process will be in place within 30 days.

Reviewing Contractor's Response: Metra's response is not adequate because it didn't fully address the deficiency. All contracts with deficient progress payments should be revised, and the standard language should be included in all current and future solicitations and contracts. Evidence of the contract modifications for all deficient contracts and copies of revised procedures and processes, copy of the revised contract language, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

48. Cost Plus Percentage of Cost

Basic Requirement: Chapter VI, Section 2.c. (2) (a) of FTA C 4220.1F indicates that the cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Discussions: Of the forty-four (44) procurements reviewed for this requirement, forty-one (41) were not deficient and three (3) were found to be deficient. In two (2) cost-plus-fixed-fee procurements for construction management services, there was a fixed-fee by task order rather than an overall fixed-fee for the contract. Under the cost-plus-percentage-of-cost methodology there is no stated limit to the amount of fee the supplier may be able to receive. The procurement for ticket vending machines was documented as a cost-plus-fixed-fee contract; however, no fixed-fee was noted in the compensation provisions. Metra should include a total fixed-fee for all cost type contracts.

Best Practices: The cost-plus-a-percentage-of-cost type of contract is banned in Federal Acquisition and cannot be used by Grantees.

Corrective Action: Metra should revise all contracts that do not state a fixed-fee and ensure that all contracts include language about the type of contract intended. Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The Element's Discussion listed on the FTA Procurement System Review states:

"Of the forty-four (44) procurements reviewed for this requirement, forty-one (41) were not deficient and three (3) were found deficient. In two (2) cost-plus-fixed-fee procurements for construction management services, there was a fixed-fee by task order rather than an overall fixed-fee for the contract. Under the cost-plus-percentage-of-cost methodology there is no stated limit of fee the supplier may be able to receive. The procurement for ticket vending machines was documented as a cost-plus-fixed-fee contract; however, no fixed-fee was noted in the compensation provisions. Metra should include a total fixed-fee for all cost type contracts."

Metra does not concur. Metra's 4400 Cost Form 4400 for construction contracts does have a fixed-fee field on the form. However, the contract for the vending machines states: "the prices stipulated on Metro's Form 4400 (or any other cost or price schedule) which is either attached as Exhibit 2 of this Agreement, or is incorporated by reference, as directed by Metra." This contract did not require a Form 4400 since price lists were in Exhibit 2. Exhibit 2 consisted of three price lists:

The first price list is for the vending machines at a unit price of $1,234.94 each; the second price list is for the Data System Elements at a lot cost of $64,800.00, and in addition, a total of four lots of various spare parts at a total cost of $105,070; and the third price list is for various communication, transactional, maintenance and customer support fees at a rate of per transaction or per month fees.

The other two (2) deficient findings pertained to A & E blanket type of contracts, Metra did not negotiate the fixed hourly or burden rates prior to contract approval. The actual negotiation occurred at the time a "task" was assigned, when estimated hours were included along with the hourly and burden rate.

Metra concurs and effective immediately the process has boon implemented for negotiating to establish the fixed hourly rates and burden rate done prior to any contract approval for all blanket fixed-foe type A & E contracts.

Reviewing Contractor's Response: Metra's response is not adequate. Metra should amend the construction management contract to include an overall estimated costs and fixed fee. Evidence of this amendment must be provided to FTA as well as the history of all amendments with associated costs and fixed fees. Further, all existing contracts of this type should be revised. A list of these contracts, the history of cost and fixed fee additions, and evidence of contract modifications incorporating this change must be provided to FTA. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

52. Serial Price Negotiations [A&E]

Basic Requirement: Chapter VI, Section 3.f. (3) (d) of FTA C 4220.1F indicates that under the Brooks Act:

- Negotiations be conducted with only the most qualified offeror
- Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

Discussion: Two (2) A&E procurements were reviewed for this requirement and one (1) was found to be deficient due to a lack of documentation on negotiations conducted. There was no documentation on how the final blanket purchase order value was arrived at or any evidence of negotiations.

Best Practices: The use of serial negotiations to determine the contract price after the preferred technical choices have been made addresses the cost issue as secondary to the quality issues. The grantee must be careful to specify a realistic level of qualifications required to perform the work and then evaluate against those needs to avoid technical selection of over-qualified firms whose pricing may be difficult to adjust to the grantee's budget. Both procurement and technical staff must be knowledgeable in A&E procurement requirements.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Need Clarification

Metra's Response: Two (2) A & E procurements were reviewed for this requirement and one (1) was found deficient due to lack of documentation on negotiations conducted. There was no documentation on how the final blanket purchase order value was arrived at or any evidence of negotiations.

This contract was one of 8 awards issued from Request for Proposal No. 87659, and the original scoring documentation is located in the first contract, K30869, and is referred to in the contract file that the review found deficient. However, the value of the contract is noted on the Request for Proposal as a "not to exceed" amount, and in this case, that contract had a set value of $500,000.00. In addition, Metra did not negotiate the fixed hourly or burden rates prior to contract approval. The actual negotiation occurred at the time a "task" was assigned when estimated hours were included along with the hourly and burden rate.

Metra concurs and effective immediately the process has boon implemented for negotiating to establish the fixed hourly rates and burden rate done prior to any contract approval for all blanket fixed-fee typo A & E contracts.

Reviewing Contractor's Response: Metra's response to this deficiency is not adequate because it did not address how this deficiency will be corrected. All of the contracts issued from RFP No. 87659 should be amended. The history of contract costs and fee must be provided to FTA and evidence of contract changes must be provided to FTA. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

56. Clauses

Basic Requirement: Chapter IV, Section 2 and Appendix D of FTA C 4220.1F indicates that:

- A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement.
- Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement.

Discussion: Of the fifty-three (53) procurements reviewed for this requirement, twenty-three (23) were found to be deficient. The standard contract clauses used by Metra for purchases under the small purchase threshold and for professional services do not include the clauses required by FTA.

Best Practices: The Best Practices Procurement Manual discusses which Federal clauses are to be flowed down to sub-contractors and third parties. The flow-down requirements are applicable not only to contracts but to purchase orders as well. See Appendix L, Contract Clauses for an example of a contract clause listing. Purchase order forms that include these requirements should be put in place. Including all required clauses in every file would simplify contract preparation for all federally funded items. Current procedures do not list all the specific flow-down requirements and should be updated to do so, whether in an appendix or in the body of the procedure. Grantees should also provide training to all personnel who are involved in the procurement process (including sub-contractors) to ensure they are familiar with the requirements of the FTA Circular and Master Agreement.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The 23 deficient files lacking the appropriate FTA Clauses were identified against Metro's procurements under $10,000.

Metra concurs and will notify all bidders that Federal statutory and regulatory applicable requirements apply for all federally funded purchases. Additionally, required clauses will be maintained in the respective procurement file. This process will be in place within 30 days.

Reviewing Contractor's Response: Metra's response is not adequate because it did not address how the required clauses will be included in contracts for professional services. The corrective action must be revised to include the current and future inclusion of clauses in this type of contract. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

Buy America Requirements

The purchase for the utility trucks and cargo vans was reviewed for this requirement and was found to be deficient in both the pre-award review and post-delivery audit. FTA requires that the Buy America certifications be completed for vehicle procurements exceeding $100,000 even if they are not commonly regarded as rolling stock.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Metra is aware of Buy America requirements pertaining to Rolling Stock procurements and has completed "pre" and "post" Buy America audits for past rolling stock procurements.

Metra concurs that the procurement of rubber tire cargo vans should have been done in accordance with Buy America requirements. Staff is in the process of reviewing what is required for rubber tire vehicles and then they will perform the appropriate analysis and reviews.

Reviewing Contractor's Response: The requirement for pre-award and post-delivery audits does not apply to the purchase of non-revenue rolling stock; however, non-revenue rolling stock must comply with 49 C.F.R. Part 661. Metra has not provided documentation that the vehicles purchased, in fact, complied with applicable Buy America requirements. Metra must provide that documentation within 30 days of the date of the final report. Failure to provide this documentation may result in the non-participation of FTA in this procurement. Additionally, Metra must provide documentation that all other FTA-funded procurements completed for the years 2007-2011 for non-revenue rolling stock (including contracts P.O. K90086, P.O. K90128, and P.O. K90083) complied with 49 C.F.R. Part 661 within 30 days of the date of the final report. For future non-revenue rolling stock purchases, copies of revised procedures and processes; evidence of training; and independent audit reports validating the use of compliant procedures, must be provided to FTA within 30 days of the date of the final report.

Have Been Attached

VI. SUGGESTIONS FOR IMPROVING THE PROCUREMENT SYSTEM

The suggestions for improving the system are provided by the reviewing contractor to highlight practices that were observed during the PSR that, if not changed, could result in future deficiencies. These suggestions do not address FTA requirements, but point to under-performing or non-existent elements of the grantee's procurement system. Seventeen (17) improvements were suggested, as specified below:

1. Alter the RFP scoring process such that all evaluation committee members prepare individual scores and submit to procurement to roll-up for discussion. This will ensure transparency in the evaluation process.
2. The Board of Directors should approve all changes to the policy and procedure manual.
3. Improve file organization by implementing file tab checklists for procurement file documentation. This will ensure that all documentation is consistently maintained for each contract file. - Yes
4. Implement a process where the Board of Directors approves all contracts over a certain dollar threshold regardless of method of procurement.
5. Reduce allowable acceptance of gifts to a maximum amount of $25.
6. Improve procurement planning and documentation of planning activity.
7. Include CPFF and T&M contract administration guidelines in policies and procedures.
8. Final overhead rates should be determined within ninety (90) days from the end of each calendar year for all CPFF type contracts. - Audit
9. Revise Ordinance 94-1 to reflect current FTA terminology, for example, use of RFP and Sealed Bid rather than Competitive Bidding. - Terms In Process
10. Review use of the term "retainer" to avoid misunderstanding of contract type.
11. Maintain a copy of the cost analysis completed by internal audit in the procurement file. - We Do
12. Include documentation of responsibility determination and EPLS check in procurement file in addition to the notation on the bid tab.
13. Evaluate the composition of evaluation committees to ensure that there is cross-functional representation. - Done
14. Implement training on FTA requirements for all members of the Materials Management team. - Working on
15. When making significant changes to the requirements during the solicitation such as occurred in the procurement for elevator design and installation, Metra should cancel the original solicitation and rebid. - Addendum
16. Revise the change order authorization form language to read that the change is either "in scope" or "out of scope" only. - Set in
17. When a single bid is received, include additional information about the market analysis conducted. - Doing

VII. APPENDIX ITEMS

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Appendix A: Deficient Contracts by Element

2	Contract Administration System	System-Wide Element				
5	System for Ensuring Most Efficient & Economic Purchase	System-Wide Element				
6	Procurement Policies & Procedures	System-Wide Element				
7	Independent Cost Estimates	Small Purchase	87251	$7,182.00	Western Remae Inc.	Acrylic Frames
		IFB	03725; MPA P0185	$580,000, NTE $2M	Century Contractors	Dump Truck Rental
		IFB	4747	$200,000.00	Asplundh Tree Expert Co.	On Track Tree Trimming
		IFB	92276	$100,000.00	Digital Imaging Resources	Printing/Reproduction Services
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
		RFP	84505	$250,000; C.O. $520K or $770K	Diamond Mgmt and Tech	Revenue Accounting Services
		Sole Source	90819	$12,811.00	AT&T	Relocation of Demarc
		Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services
12	Arbitrary Action	RFP	99686	$10,094,220.00	AST Corp.	Revenue Accounting System
		RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending
		RFP	44057	CO #1 for $119,480	Edwards and Kelsey	Design of 22 Union Pacific-North Line Bridge
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
13	Brand Name Restriction	Small Purchase	99792	$5,274.00	Dell Marketing	Laptop Computers
		Small Purchase	4249	$9,997.04	General Cable	Wire
		IFB	72235	$16,066,800.00	Progress Rail Services	Re-manufacture EMD F40 PH Locomotives; Rebid of Remanufacture of 50 EMD
		IFB	91582	$312.50 (line item from IFB)	Electrowire	Wire and Cable
		IFB	4747	$200,000.00	Asplundh Tree Expert Co.	On Track Tree Trimming
		IFB	87991	$171,338.00	Mainline Info Systems	IBM System Storage and Hardware
		IFB	90412	$32,099.98	Revere Electric Supply Co.	Temperature Control Kits
15	Contract Period of Performance	RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars

16	Written Procurement Selection Procedures	IFB	90271; MPA P0158	$70,000, NTE $2.5M	Century Contractors	Paving
		IFB	03725; MPA P0185	$580,000, NTE $2M	Century Contractors	Dump Truck Rental
		RFP	99771	$120,000.00	AT&T	Cisco Core Routers Installation
		RFP	86671	$1,574,424.21	Raul v. Bravo and Associates	Inspection Services for Locomotive Remanufacture
		RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
		RFP	2847	$3,579,474.48	IBM	Maintenance, Modification, and Warranty Tracking
18	Award to Responsible Contractor	IFB	99635	$39,174.00	Handi-Hut	Passenger Shelter
		IFB	90653	$4,958,500.00	Blinderman-Mecco-JV	Winnetka Station Construction
		IFB	90078	$1,943,502.00	Terry's Ford	Utility Trucks and Cargo Vans
		IFB	90271; MPA P0158	$70,000, NTE $2.5M	Century Contractors	Paving
		IFB	90297	$574,900.00	Chicagoland Paving Contractors	Pringree Rd. Station Parking Lost
		IFB	91582	$312.50 (line item from IFB)	Electrowire	Wire and Cable
		IFB	98511	$8,895,891.00	John Burns	Construction of New Commuter Rail Station at 35th Street
		IFB	85927	$5,698,000.00	FH Paschen, NS Nielson	75th and 79th Bridge Reconstruction
		IFB	2512	$66,895,000 (base contract)	Walsh Construction	Union Pacific RR/METRA North Line Bridges, Retaining Walls, Ravenswood Station
		IFB	90763, PO139	$31,500, NTE $2.5M	Engineered Plastics	Composite Deck Panels
		IFB	4747	$200,000.00	Asplundh Tree Expert Co.	On Track Tree Trimming
		IFB	90206	$1,130,011.50	Chicagoland Paving	Elburn Station Parking
		RFP	99686	$10,094,220.00	AST Corp.	Revenue Accounting System
		RFP	99771	$120,000.00	AT&T	Cisco Core Routers Installation
		RFP	86671	$1,574,424.21	Raul v. Bravo and Associates	Inspection Services for Locomotive Remanufacture
		RFP	4690	$896,733.46	Systems Development Integration	Email Migration Implementation
		RFP	42990	$2,589,528.26	Smith Engineering Consultants	Metro/Oswego and Other Design and Engineering Services
		RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending

18	Award to Responsible Contractor (cont.)	RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
		RFP	2847	$3,579,474.48	IBM	Maintenance, Modification, and Warranty Tracking
		Sole Source	91773	$329,783.58	Vapor Stone Rail Systems	Door Closures; Anti-Freeze Components
		Sole Source	90819	$12,811.00	AT&T	Relocation of Demarc
		Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services
19	Sound and Complete Agreement	RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
24	Complete Specification	Small Purchase	99792	$5,274.00	Dell Marketing	Laptop Computers
		IFB	90078	$1,943,502.00	Terry's Ford	Utility Trucks and Cargo Vans
		IFB	4747	$200,000.00	Asplundh Tree Expert Co.	On Track Tree Trimming
		RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services
25	Adequate Competition	IFB	2465	$1,372,308.00	Schindler Elevator Corp.	Elevators
		IFB	3282	$300,000; Proposal $632,774	Loram Rail Services	Rail Grinding Service
		IFB	87991	$171,338.00	Mainline Info Systems	IBM System Storage and Hardware
36	Evaluation (RFP)	RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
37	Price and Other Factors (RFP)	RFP	99686	$10,094,220.00	AST Corp.	Revenue Accounting System
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
38	Sole Source	Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services
39	Cost Analysis Required (Sole Source)	Sole Source	91773	$329,783.58	Vapor Stone Rail Systems	Door Closures; Anti-Freeze Components
		Sole Source	90819	$12,811.00	AT&T	Relocation of Demarc
		Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services

41	Cost or Price Analysis	Small Purchase	4583	$9,177.18	Fasteners Plus Inc.	Misc. Fasteners
		Small Purchase	3674	$6,335.00	Motion Savers Inc.	Shelving
		Small Purchase	90220	$4,142.40	WS Hampshire Inc.	Electrical Insulation Molded Glass Mat
		Small Purchase	99792	$5,274.00	Dell Marketing	Laptop Computers
		Small Purchase	2028	$2,884.50	Kustom Seating Unlimited	Fiberglass Cloth
		Small Purchase	90831	$7,696.80	Revere Electric Supply	Ballasts, Lampholders and Co.
		Small Purchase	4249	$9,997.04	General Cable	Wire
		Small Purchase	98398	$9,885.00	Standby Power System Consultants	Removal/Installation of Battery Charger Back-up
		Small Purchase	91199	$2,500.00	GMI LLC	Wire and Cable
		Small Purchase	87251	$7,182.00	Western Remae Inc.	Acrylic Frames
		IFB	99635	$39,174.00	Handi-Hut	Passenger Shelter
		IFB	90653	$4,958,500.00	Blinderman-Mecco-JV	Winnetka Station Construction
		IFB	91082	$58,312.00	NW General Contractors Inc.	Lockput Station Construction
		IFB	2465	$1,372,308.00	Schindler Elevator Corp.	Elevators
		IFB	99364	$1,057,636.00	Westcode Inc.	Alc. And Motor Controls
		IFB	91767	$1,351,740.00	TTA	Overhaul of Bi-Level Coach Trucks
		IFB	90078	$1,943,502.00	Terry's Ford	Utility Trucks and Cargo Vans
		IFB	3858	$25,000.00	Netrix LLC	Network Communications Equipment
		IFB	3282	$300,000; Proposal $632,774	Loram Rail Services	Rail Grinding Service
		IFB	90271; MPA P0158	$70,000, NTE $2.5M	Century Contractors	Paving
		IFB	03725; MPA P0185	$580,000, NTE $2M	Century Contractors	Dump Truck Rental
		IFB	90170	$95,136.00	North America Video	Ethernet, Rack and Transceiver
		IFB	90297	$574,900.00	Chicagoland Paving Contractors	Pringree Rd. Station Parking Lost
		IFB	98932	$500,000.00	Illinois Constructor Corp.	Bridge Repair Services on Retainer Basis
		IFB	91232	$1,755,805.80	Freyssinct LLC	Elec. Dist. Brs. Repair 59th - 76th
		IFB	98511	$8,895,891.00	John Burns	Construction of New Commuter Rail Station at 35th Street
		IFB	85927	$5,698,000.00	FH Paschen, NS Nielson	75th and 79th Bridge Reconstruction
		IFB	2512	$66,895,000 (base contract)	Walsh Construction	Union Pacific RR/METRA North Line Bridges, Retaining Walls, Ravenswood Station
		IFB	90763, P0139	$31,500, NTE $2.5M	Engineered Plastics	Composite Deck Panels

41	Cost or Price Analysis (cont.)	IFB	4747	$200,000.00	Asplundh Tree Expert Co.	On Track Tree Trimming
		IFB	88004	$4,324,920.00	Passer American Corp.	Category Inspection and Maintenance
		IFB	91347	$564,000.00	John Burns Construction	Construction Services at Joliet Station
		IFB	87481	$26,148.00	Monogram Systems	Retention Toilets
		IFB	92276	$100,000.00	Digital Imaging Resources	Printing/Reproduction Services
		IFB	90206	$1,130,011.50	Chicagoland Paving	Elburn Station Parking
		RFP	99686	$10,094,220.00	AST Corp.	Revenue Accounting System
		RFP	99771	$120,000.00	AT&T	Cisco Core Routers Installation
		RFP	86671	$1,574,424.21	Raul v. Bravo and Associates	Inspection Services for Locomotive Remanufacture
		RFP	4690	$896,733.46	Systems Development Integration	Email Migration Implementation
		RFP	42990	$2,589,528.26	Smith Engineering Consultants	Metro/Oswego and Other Design and Engineering Services
		RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
		RFP	84505	$250,000; C.O. $520K or $770K	Diamond Mgmt and Tech	Revenue Accounting Services
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
42	Written Record of Procurement History	Small Purchase	4249	$9,997.04	General Cable	Wire
		Small Purchase	98398	$9,885.00	Standby Power System Consultants	Removal/Installation of Battery Charger Back-up
		IFB	91767	$1,351,740.00	TTA	Overhaul of Bi-Level Coach Trucks
		IFB	3282	$300,000; Proposal $632,774	Loram Rail Services	Rail Grinding Service
		IFB	90271; MPA P0158	$70,000, NTE $2.5M	Century Contractors	Paving
		IFB	03725; MPA P0185	$580,000, NTE $2M	Century Contractors	Dump Truck Rental
		IFB	98932	$500,000.00	Illinois Constructor Corp.	Bridge Repair Services on Retainer Basis
		RFP	99686	$10,094,220.00	AST Corp.	Revenue Accounting System
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services

42	Written Record of Procurement History (cont.)	RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering in Rehab of 176 Bi-level Passenger Railcars
		Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services
44	Out of Scope Changes	IFB	84763	$276,000.00	John Burns Construction	ADA Station Upgrade
		RFP	99771	$120,000.00	AT&T	Cisco Core Routers Installation
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending
46	Progress Payments	IFB	90653	$4,958,500.00	Blinderman-Mecco-JV	Winnetka Station Construction
		IFB	91082	$58,312.00	NW General Contractors Inc.	Lockput Station Construction
		IFB	2465	$1,372,308.00	Schindler Elevator Corp.	Elevators
		IFB	90297	$574,900.00	Chicagoland Paving Contractors	Pringree Rd. Station Parking Lost
		IFB	98932	$500,000.00	Illinois Constructor Corp.	Bridge Repair Services on Retainer Basis
		IFB	98511	$8,895,891.00	John Burns	Construction of New Commuter Rail Station at 35th Street
		IFB	2512	$66,895,000 (base contract)	Walsh Construction	Union Pacific RR/METRA North Line Bridges, Retaining Walls, Ravenswood Station
		IFB	91347	$564,000.00	John Burns Construction	Construction Services at Joliet Station
		IFB	90206	$1,130,011.50	Chicagoland Paving	Elburn Station Parking
48	Cost Plus Percentage of Cost	RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
52	Serial Price Negotiation (A&E)	RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services ✓
56	Clauses	Small Purchase	4583	$9,177.18	Fasteners Plus Inc.	Misc. Fasteners
		Small Purchase	3674	$6,335.00	Motion Savers Inc.	Shelving
		Small Purchase	90220	$4,142.40	WS Hampshire Inc.	Electrical Insulation Molded Glass Mat
		Small Purchase	99792	$5,274.00	Dell Marketing	Laptop Computers
		Small Purchase	2028	$2,884.50	Kustom Seating Unlimited	Fiberglass Cloth
		Small Purchase	90831	$7,696.80	Revere Electric Supply	Ballasts, Lampholders and Co.
		Small Purchase	4249	$9,997.04	General Cable	Wire
		Small Purchase	98398	$9,885.00	Standby Power System Consultants	Removal/Installation of Battery Charger Back-up
		Small Purchase	91199	$2,500.00	GMI LLC	Wire and Cable
		Small Purchase	87251	$7,182.00	Western Remae Inc.	Acrylic Frames
		IFB	91582	$312.50 (line item from IFB)	Electrowire	Wire and Cable (See K91199)
		RFP	99686	$10,094,220.00	AST Corp.	Revenue Accounting System

56	Clauses (cont.)	RFP	99771	$120,000.00	AT&T	Cisco Core Routers Installation
		RFP	4690	$896,733.46	Systems Development Integration	Email Migration Implementation
		RFP	42990	$2,589,528.26	Smith Engineering Consultants	Metro/Oswego and Other Design and Engineering Services
		RFP	86876	$2,128,331.00	Engineering and Mgmt Specialists Inc.	QA Oversight and General Program Support
		RFP	91048	$2,500,000.00	AECOM	Construction Management Services
		RFP	90657	Not Noted	GFI Genfare	Ticket Vending
		RFP	91049	$8,400,000.00	V3 Companies of Illinois Ltd	Blanket Agreement
		RFP	91240	$750,000.00	LTK Engineering Services	Blanket Signal Engineering Services
		RFP	90926	$5,995,673.00	Nippon Sharyo	MFG Engineering In Rehab of 176 Bi-level Passenger Railcars
		Sole Source	90819	$12,811.00	AT&T	Relocation of Demarc
		Sole Source	2912	$46,585.00	Mercury Associates Inc.	Fleet Mgmt Consulting Services
	Buy America Pre and Post Award	IFB	90078	$1,943,502.00	Terry's Ford	Utility Trucks and Cargo Vans

Appendix B: Deficiencies by Contract

Small Purchase

91199 GMI LLC, Wire and Cable, $2,500.00

- Clauses
- Cost or Price Analysis

2028 Kustom Seating Unlimited, Fiberglass Cloth, $2,884.50

- Clauses
- Cost or Price Analysis

90220 WS Hampshire Inc., Electrical Insulation Molded Glass Mat, $4,142.40

- Clauses
- Cost or Price Analysis

99792 Dell Marketing, Laptop Computers, $5,274.00

- Brand Name Restriction
- Clauses
- Complete Specification
- Cost or Price Analysis

3674 Motion Savers Inc., Shelving, $6335.00

- Clauses
- Cost or Price Analysis

87251 Western Remae Inc., Acrylic Frames, $7182.00

- Clauses
- Cost or Price Analysis
- Independent Cost Estimate

90831 Revere Electric Supply, Ballasts, Lamp Holders, and Co., $7,969.80

- Clauses
- Cost or Price Analysis

4583 Fasteners Plus Inc., Misc. Fasteners, $9,177.18

- Clauses
- Cost or Price Analysis

98398 Standby Power System Consultants, Removal/Installation of Battery Charger Back-Up, $9885.00

- Clauses
- Cost or Price Analysis
- Written Record of Procurement History

4249 General Cable, Wire, $9,997.04

- Brand Name Restriction
- Clauses
- Cost or Price Analysis
- Written Record of Procurement History

IFB

91582 Electrowire, Wire and Cable, $312.50 (Line item from IFB)

- Award to Responsible Contractor
- Brand Name Restriction
- Clauses

3858 Netrix LLC, Network Communications Equipment, $25,000.00

- Cost or Price Analysis

87481 Monogram Systems, Retention Toilets, $26,148.00

- Cost or Price Analysis

90412 Revere Electric Supply Co., Temperature Control Kits, $32,099.98

- Brand Name Restriction

99635 Handi-Hut, Passenger Shelter, $39,174.00

- Award to Responsible Contractor
- Cost or Price Analysis

91082 NW General Contractors Inc., Lockput Station Construction, $58,312.00

- Cost or Price Analysis
- Progress Payments

90170 North America Video, Ethernet Rack and Transceiver, $95,136.00

- Cost or Price Analysis

92276 Digital Imaging Resources, Printing/Reproduction Services, $100,000.00

- Cost or Price Analysis
- Independent Cost Estimate

87991 Mainline Info Systems, IBM System Storage and Hardware, $171,338.00

- Adequate Competition
- Brand Name Restriction

4747 Asplundh Tree Expert Co., On Track Tree Trimming, $200,000.00

- Award to Responsible Contractor
- Brand Name Restriction
- Complete Specification
- Cost or Price Analysis
- Independent Cost Estimate

84763 John Burns Construction, ADA Station Upgrade, $276,000.00

- Out of Scope Change

3282 Loram Rail Services, Rail Grinding Service, $300,000 (proposal $632,774)

- Adequate Competition
- Cost or Price Analysis
- Written Record of Procurement History

98932 Illinois Constructor Corp., Bridge Repair Services on Retainer Basis, $500,000.00

- Cost or Price Analysis
- Progress Payments
- Written Record of Procurement History

91347 John Burns Construction, Construction Services at Joliet Station, $564,000.00

- Cost or Price Analysis
- Progress Payments

90297 Chicagoland Paving Contractors, Pringree Rd. Station Parking Lot, $574,900.00

- Award to Responsible Contractor
- Cost or Price Analysis
- Progress Payments

99364 Westcode Inc., Alc. And Motor Controls, $1,057,636.00

- Cost or Price Analysis

90206 Chicagoland Paving, Elburn Station Parking, $1,130,011.50

- Award to Responsible Contractor
- Cost or Price Analysis
- Progress Payments

91767 TTA, Overhaul of Bi-Level Coach Trucks, $1,351,740.00

- Cost or Price Analysis
- Written Record of Procurement History

2465 Schindler Elevator Corp., Elevators, $1,372,308.00

- Adequate Competition
- Cost or Price Analysis
- Progress Payments

91232 Freyssinct LLC, Elec. Dist. Brs. Repair 59th – 76th, $1,755,805.80

- Cost or Price Analysis

90078 Terry's Ford, Utility Trucks and Cargo Vans, $1,943,502.00

- Award to Responsible Contractor
- Buy America Pre and Post Award Certifications
- Complete Specification
- Cost or Price Analysis

3725 (MPA PO 185) Century Contractors, Dump Truck Rental, NTE $2,000,000.00 ($580,000.00)

- Cost or Price Analysis
- Independent Cost Estimate
- Written Procurement Selection Procedures
- Written Record of Procurement History

90763 (PO 139) Engineered Plastics, Composite Deck Panels, NTE $2,500,000.00 ($31,500)

- Award to Responsible Contractor
- Cost or Price Analysis

90271 (MPA PO 158) Century Contractors, Paving, NTE $2,500,000.00 ($70,000.00)

- Award to Responsible Contractor
- Cost or Price Analysis
- Written Procurement Selection Procedures
- Written Record of Procurement History

88004 Passer American Corp., Category Inspection and Maintenance, $4,324,920.00

- Cost or Price Analysis

90653 Blindermann-Mecco JV, Winnetka Station Construction, $4,958,500.00

- Award to Responsible Contractor
- Cost or Price Analysis
- Progress Payments

85927 FH Paschen, NS Nielson, 75th and 79th Bridge Reconstruction, $5,698,000.00

- Award to Responsible Contractor
- Cost or Price Analysis

98511 John Burns Construction, Construction of New Commuter Rail Station at 35th Street, $8,895,891.00

- Award to Responsible Contractor
- Cost or Price Analysis
- Progress Payments

72235 Progress Rail Services, Remanufacture EMD F40PH Locomotives; Rebid of Remanufacture of 50 EMD, $16,066,800.00

- Brand Name Restriction

2512 Walsh Construction, Union Pacific RR/METRA North Line Bridges, Retaining Walls, Ravenswood Station, $66,895,000.00 (base contract)

- Award to Responsible Contractor
- Cost or Price Analysis
- Progress Payments

RFP

44057 Edwards and Kelcey, Design of 22 Union Pacific-North Line Bridges, $119,480 (CO#1)

- Arbitrary Action

99771 AT&T, Cisco Core Routers Installation, $120,000.00

- Award to Responsible Contractor
- Clauses
- Cost or Price Analysis
- Out of Scope Changes
- Written Procurement Selection Procedures

84505 Diamond Mgmt and Tech, Revenue Accounting Services, $250,000 (base); $520,000 or $770,000 (change orders)

- Cost or Price Analysis
- Independent Cost Estimates

91240 LTK Engineering Services, Blanket Signal Engineering Services, $750,000.00

- Award to Responsible Contractor
- Clauses
- Independent Cost Estimate
- Price and Other Factors [RFP]
- Serial Price Negotiation [A&E]
- Sound and Complete Agreement
- Written Procurement Selection Procedures
- Written Record of Procurement History

4690 Systems Development Integration, Email Migration Implementation, $896,733.46

- Award to Responsible Contractor
- Clauses
- Cost or Price Analysis

86671 Raul V. Bravo and Associates, Inspection Services for Locomotive Remanufacture, $1,574,424.21

- Award to Responsible Contractor
- Cost or Price Analysis
- Written Procurement Selection Procedures

86876 Engineering and Mgmt Specialists Inc., QA Oversight and General Program Support, $2,128,331.00

- Arbitrary Action
- Award to Responsible Contractor
- Clauses
- Complete Specification
- Cost or Price Analysis
- Evaluation [RFP]
- Written Procurement Selection Procedures

91048 AECOM, Construction Management Services, $2,500,000.00

- Award to Responsible Contractor
- Clauses
- Complete Specification

- Cost or Price Analysis
- Cost Plus Percentage of Cost
- Independent Cost Estimate
- Price and Other Factors [RFP]
- Written Record of Procurement History

42990 Smith Engineering Consultants, Metro/Oswego and Other Design and Engineering Services, $2,589,528.26

- Award to Responsible Contractor
- Clauses
- Cost or Price Analysis

2847 IBM, Maintenance, Modification, and Warranty Tracking, $3,579.474.48

- Award to Responsible Contractor
- Written Procurement Selection Procedures

90926 Nippon Sharyo, MFG Engineering in Rehab of 176 Bi-Level Passenger Railcars, $5,995,673.00

- Arbitrary Action
- Award to Responsible Contractor
- Clauses
- Contract Period of Performance
- Cost or Price Analysis
- Evaluation [RFP]
- Sound and Complete Agreement
- Written Procurement Selection Procedures
- Written Record of Procurement History

91049 V3 Companies of Illinois Ltd, Blanket Agreement, $8,400,000.00

- Award to Responsible Contractor
- Clauses
- Complete Specification
- Cost or Price Analysis
- Cost Plus Percentage of Cost
- Evaluation [RFP]
- Independent Cost Estimate
- Price and Other Factors [RFP]
- Written Procurement Selection Procedures
- Written Record of Procurement History

99686 AST Corp., Revenue Accounting System, $10,094,220.00

- Arbitrary Action
- Award to Responsible Contractor
- Clauses
- Cost or Price Analysis
- Price and Other Factors [RFP]
- Written Record of Procurement History

90657 GFI Genfare, Ticket Vending, Award Amount Not Noted

- Arbitrary Action
- Award to Responsible Contractor
- Clauses
- Cost or Price Analysis
- Cost Plus Percentage of Cost
- Out of Scope Change
- Written Record of Procurement History

Sole Source

90819 AT&T, Relocation of Demarc, $12,811.00

- Award to Responsible Contractor
- Clauses
- Cost Analysis Required [Sole Source]
- Independent Cost Estimate

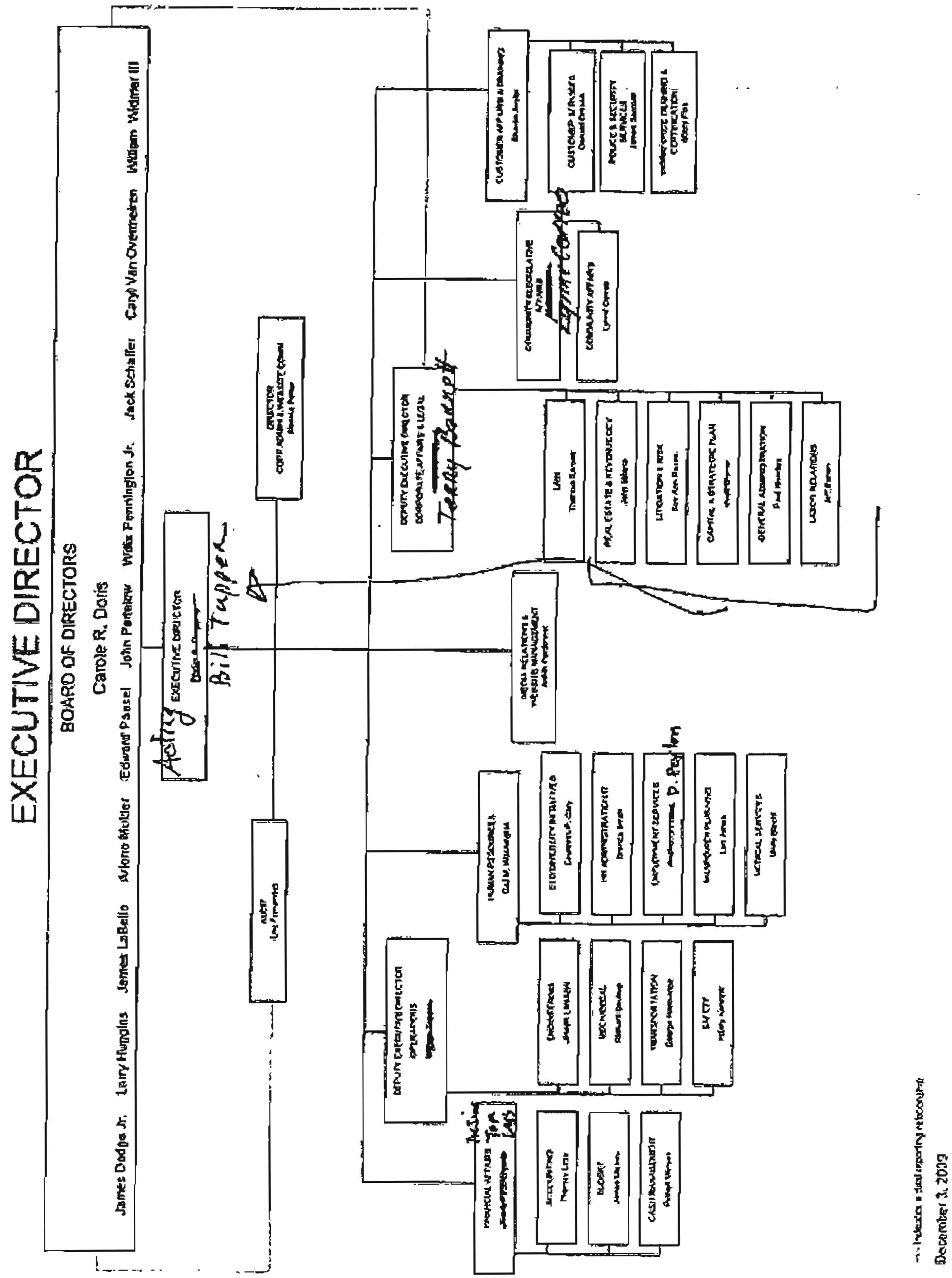
2912 Mercury Associates Inc., Fleet Mgmt Consulting Services, $46,585.00

- Award to Responsible Contractor
- Clauses
- Complete Specification
- Cost Analysis Required [Sole Source]
- Independent Cost Estimate
- Sole Source if Other Award is Infeasible
- Written Record of Procurement History

91773 Vapor Stone Rail Systems, Door Closures; Anti-Freeze Components, $329,783.58

- Award to Responsible Contractor
- Cost Analysis Required [Sole Source]

Appendix C: Organization Chart



Appendix D: Pre-Bid Independent Cost Estimate

Contract Type: *Date of Estimate:*

Description of Goods / Service:

Method of Obtaining the Estimate:
I have obtained the following estimate from....

- ○ Published Price List / Past pricing (date)_____
- ○ Engineering or technical estimate
- ○ Independent Third Party estimate
- ○ Other (specify)_____

Cost Estimate Details:
Through the method stated above it has been determined that the total cost of the goods/services is expected to be: $_____. Details are shown below.

Cost of Standard Items

US Dollars

A

Product	Cost ($/ea) Delivered	Cost ($/ea) No Freight	Notes / Data Source

Cost of Services, Repairs, or Non-Standard Items

B

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

Signature of Preparer:
The preceding cost estimate was obtained or prepared by:

_____

[For complex items or tasks, attach detailed spreadsheet(s) explaining rationale.]

Appendix E: Responsibility Determination Form

Bid/RFP No: _____

Supplier: _____

Date: _____

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

	Acceptable	Comment
1. Appropriate financial, equipment, facility, and personnel	☐ Yes ☐ No	_____
2. Ability to meet the delivery schedule	☐ Yes ☐ No	_____
3. Satisfactory period of performance	☐ Yes ☐ No	_____
4. Satisfactory record of integrity, not on declined or suspended listings	☐ Yes ☐ No	_____
5. Receipt of all necessary data from supplier	☐ Yes ☐ No	_____

Appendix F: Single Source Analysis

(Complete this form when Metra receives only one bid in response to an IFB or RFP)

Solicitation: _____	Action to Plan:
Product/Service to be Procured: _____	☐ Award Contract Basis: _____ _____ _____
Bid or Proposal Due Date: _____	☐ Extend Deadline (modify solicitation): New Due Date: _____
Number of Solicitations Requested: _____	Reprocure: New Solicitation Due to be Completed: _____
Number of Bids Received: _____	Projected Due Date: _____
Reasons for Lack of Competition (based on Supplier Contracts)	Signed: _____
Lack competency	Title: _____
Lack available resources	Date: _____
Poor timing	
Short response due date	
Other: _____	

Appendix G: Non-Competitive Procurement Justification

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

Check one:

_____ The item is available only from a single source (sole source justification is attached).

_____ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).

_____ FTA authorizes noncompetitive negotiations (letter of authorization is attached).

_____ After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).

_____ The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

Comments:

_____

_____

_____

_____ Independent Estimate and Cost Analysis are attached.

_____	_____
Purchasing Agent	Senior Manager
_____	_____
Date	Date

Appendix H: Cost Analysis Form

PAGE	OF	PGS

COST ANALYSIS SUMMARY (For New Contracts Including Letter Contracts)
(See Instructions below)

SOLICITATION #	SUPPLIES AND/OR SERVICES TO BE FURNISHED
PREPARER'S NAME, DEPARTMENT, TITLE, PHONE	
DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED	APPROVAL SIGNATURE

DETAIL DESCRIPTION OF COST ELEMENTS

1. DIRECT MATERIAL	Vendor A Proposal	Vendor B Proposal	Independent Estimate	Analysis
A. PURCHASED PARTS				
B. SUBCONTRACTED ITEMS				
C. OTHER - (1) RAW MATERIAL				
(2) STANDARD COMMERCIAL ITEMS				
TOTAL DIRECT MATERIAL				
2. MATERIAL OVERHEAD (RATE % x $ BASE *)				

3. DIRECT LABOR	ESTIMATED HOURS	RATE/ HOUR	Vendor A ($)	Vendor B ($)	Independent Estimate	Variance
TOTAL DIRECT LABOR						

4. LABOR OVERHEAD		Vendor A $)	Vendor B $)	Independent Estimate	Variance
OH Rate					
X BASE (labor total above)					
TOTAL LABOR OVERHEAD					

5. OTHER DIRECT COSTS	Vendor A ($)	Vendor B ($)	Independent Estimate	Variance
A. SPECIAL TOOLING/EQUIPMENT				
TOTAL SPECIAL TOOLING/EQUIPMENT				
B. TRAVEL				
(1) TRANSPORTATION				
(2) PER DIEM OR SUBSISTENCE				
TOTAL TRAVEL				

DETAIL DESCRIPTION OF COST ELEMENTS (continued)	Vendor A ($)	Vendor B ($)	Independent Estimate	Variance
C. INDIVIDUAL CONSULTANT SERVICES				
TOTAL INDIVIDUAL CONSULTANT SERVICES				
D. OTHER				
TOTAL OTHER				
E. SUBTOTAL DIRECT COST AND OVERHEAD				
6. GENERAL AND ADMINISTRATIVE (G&A) RATE %				
X $ BASE (Use S.E above)				
7. ROYALTIES (If any)				
8.*SUBTOTAL ESTIMATED COST*				
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY				
10. *SUBTOTAL ESTIMATED COST*				
11. FEE OR PROFIT				
12.*TOTAL ESTIMATED COST AND FEE OR PROFIT*				
13. Discounts				
14. Option Costs (specify)				
15. ADJUSTED COST				

ANALYSIS GUIDELINES

1. DIRECT MATERIAL

A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.).

B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors

C. Other:

(1) Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.

(2) Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

2. MATERIAL OVERHEAD

Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (Item 6).

3. DIRECT LABOR

Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used . If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

4. LABOR OVERHEAD

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available,

5. OTHER DIRECT COSTS

A. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.

B. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip. Compare and check costs.

C. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.

D. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.

6. GENERAL AND ADMINISTRATIVE EXPENSE

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

7. ROYALTIES

If more than $250, analyze the following information for each separate royalty or license fee; name and address of licenser; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties,

8. SUBTOTAL ESTIMATED COST

Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY

Analyze the offerors' supporting calculations and compare to known standards.

10. SUBTOTAL ESTIMATED COST

This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.

11. FEE OR PROFIT

Review the total of all proposed Fees or Profit. Remember that the FTA prohibits cost plus percentage of cost contracting, and caps A&E profits at 10%.

12. TOTAL ESTIMATED COST AND FEE OR PROFIT

Analyze the range of total estimated costs including Fee or Profit, and explain variance to independent estimate. Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.

13. DISCOUNTS

Review basis for Discounts and range between offers.

ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE.

Appendix I: Price Analysis

PO / Contract: _____

The evidence compiled by a price analysis includes:

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

DATE:_____ PREPARED BY: _____

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

____ Comparison with competing suppliers' prices or catalog pricing for the same item. (Complete comparison matrix and attach supporting quotes or catalog pages.)

____ Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)

____ Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record).

____ Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

SUMMARY MATRIX

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

Attachments:

Appendix J: Contract/Purchase Order File Index

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

Section A - SOLICITATION DOCUMENTS		
Tab No.	Document(s)	Audited By
1	Purchase Request	
2	Specifications & DBE Goals	
3	Requirement Justification	
4	Independent Cost Estimate	
5	Bidder's List	
6	Justification of Procurement Method	
7	Copy of IFB	
8	Proof of Publication	
9	IFB Attachments/Modifications	
10	Pre-Bid Minutes & List of Attendees	
11	Correspondence with Bidders	
12	Protests Prior to Bid Opening	
13	Interoffice Correspondence	
14	Review for Responsiveness	

1. **Contract No.**_____
2. **Contract Administrator**_____
3. **Date**_____

Appendix J (continued)

Contract/Purchase Order File Index

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

Section B - AWARD DOCUMENTS		
Tab No.	**Document(s)**	**Audited By**
1	Rationale for Method of Procurement Copy of Each Bid	
2	Late Bids – Bid Errors	
3	Bid Analysis/Tabulation Sheet	
4	Technical Evaluation and Pre-Award Survey	
5	Affirmative Action Evaluation/DBE Plan	
6	Bidder Responsibility Determination	
7	Price Analysis	
8	Record of Negotiation for Single Bid (If Applicable	
9	Justification of Contract Type	
10	Award Recommendation Memo	
11	Board Resolution	
12	Notice of Award	
13	Notice to Unsuccessful Bidders (Bond, Check Returns)	
14	FTA Approval	
15	Legal Review of Contract Documents	
16	Contract Document (Drawings not required)	
17	Bond & Certificates of Insurance	
18	Notice to Proceed	
19	Purchase Order (IF applicable)	

Appendix J (continued)

Contract/Purchase Order File Index

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

Section C – CONTRACT ADMINISTRATION DOCUMENTS		
Tab No.	Document(s)	Audited By
1	Post Award Conference	
2	Status Reports	
3	Change Notices/Modifications/Change Orders	
4	Site Visit Reports	
5	Progress Meeting Minutes	
6	Quality Assurance Records	
7	Termination/Stop Work Notices or Resolution Plan	
8	Invoices and Check Requests	
9	Records of Payment	
10	Advance or Progress Payments	
11	Notice of Substantial Acceptance	
12	Punch List Discrepancies	
13	Notice of Final Acceptance	
14	Notice of Claims	
15	Release of Claims/Bonds	
16	Assignments	
17	Notice of Final Payment	
18	Audit Reports	
19	Liquidated Damages	
20	Close Out Documentation	

Appendix J (continued)

Contract/Purchase Order File Index

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

Section A - SOLICITATION DOCUMENTS		
Tab No.	**Document(s)**	**Audited By**
1	Purchase Request Rationale for Method of Procurement	
2	Specifications/Statement of Work	
3	Justification for Procurement	
4	Cost Estimate	
5	Set Aside Decision/DBE Goal	
6	Justification of Procurement Method	
7	List of Prospective Proposers	
8	Proof of Publication	
9	Copy of RFP	
10	Addenda	
11	Pre-Proposal Minutes & List of Attendees	
12	Correspondence with Bidders	
13	Interoffice Correspondence	
14	Review for Responsiveness	

Contract No._____ Contract Administrator_____

Date_____

Appendix J (continued)

Contract/Purchase Order File Index

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

Section B - AWARD DOCUMENTS		
Tab No.	Document(s)	Audited By
1	Copy of Each Proposal	
2	Proposal Tabulation Sheet	
3	Evaluation Team Notification	
4	Evaluation Sheet/Matrix	
5	Pre-Award Survey	
6	Determination of Competitive Zone	
7	Invitation for Oral Interviews	
8	Notice of Rejection	
9	Minutes of Discussions	
10	Correspondence with Proposers	
11	Cost or Price Analysis	
12	Justification for Contract Type	
13	Negotiation Memorandum	
14	Copy of Each Best and Final Offer	
15	Award Recommendation Memo	
16	Board Resolution	
17	Legal Review of Contract Documents	
18	Notice of Award	
19	Notice to Unsuccessful Proposers	
20	Procurement Summary	
21	Determination and Findings	
22	Bonds	
23	Certificates of Insurance	
24	Contract Document (Drawings not required)	
25	Notice to Proceed	
26	Purchase Order	

Appendix J (continued)

Contract/Purchase Order File Index

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

Section C – CONTRACT ADMINISTRATION DOCUMENTS		
Tab No.	**Document(s)**	**Audited by**
1	Post Award Conference	
2	Quality Assurance Records	
3	Change Notices/Modifications/Change Orders	
4	Periodic Status Reports	
5	Contractor Evaluation Form	
6	Site Visit Reports	
7	Termination/Stop Work Notices or Resolution Plan	
8	Invoices and Check Requests	
9	Records of Payment and Receipts	
10	Advance or Progress Payments Documents	
11	Notice of Substantial Acceptance	
12	Punch List Discrepancies	
13	Notice of Final Acceptance	
14	Notice of Claims	
15	Release of Claims/Bonds	
16	Assignments	
17	Notice of Final Payment	
18	Audit Reports	
19	Liquidated Damages	
20	Close Out Documentation	

Appendix K: Change Order Review Checklist

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

Change Order Checklist	Category			Comment
	ND	D	N/A	
1. In-House Estimate Prepared				
2. Project Manager Approval				
3. AWO Scope Meeting Held				
3a. Scope of Change Adequate for Bidding				
4. Contractor Proposal Includes Impact Costs, Price				
5. Cost Analysis Conducted				
5a. If Price>10% of ICE, Evidence of MTA President Approval				
6. Negotiation Memorandum				
7. Written Record of Change				
7a. Signed Change Order in File				
8. Evidence of Board Approval Prior Initiation of Changed Work				
9. Notice to Proceed in file				
10. Work Authorized within Contract Scope				
11. No Evidence of Arbitrary Action				

Other Comment

Appendix L: Contract Clauses

APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding $2,000)

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, EEO, ADA)	>$10,000	>$10,000	>$10,000	>$10,000	>$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>$25,000	>$25,000	>$25,000	>$25,000	>$25,000
Buy America			>$100,000	>$100,000	>$100,000
Resolution of Disputes, Breaches, or Other Litigation	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Lobbying	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Clean Air	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Clean Water	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Cargo Preference			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.
Fly America	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
Davis-Bacon Act				>$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		>$100,000 (except transportation services)	>$100,000	>$100,000 (including ferry vessels)	
Copeland Anti-Kickback Act Section 1 Section 2				All All exceeding $2,000 (including ferry vessels)	
Bonding				$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring $10,000 or more per year		Contracts for items designated by EPA, when procuring $10,000 or more per year	Contracts for items designated by EPA, when procuring $10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

Appendix M: Metra's Response

547 W. Jackson Blvd Chicago, Illinois 60661 Telephone: (312) 322-6900 TTY# 1-312-322-6774

March 29, 2011

Mr. Dominick J. Gatto P.E.
Director, Office of Program Management and Oversight
Federal Transit Administration
Region V
200 West Adams Street, Suite 320
Chicago, Illinois 60606

Re: FY 2011 Procurement System Review
Draft Report

Dear Mr. Gatto:

The attached memorandum from Mr. Fred Smalarz, Senior Director for Materials Management provides Metra's response to the FY 2011 Procurement System Review Draft Report. We specifically focused our comments on the reviewed elements found to be deficient. While our examination of specific reviewed contracts and processes did not always produce perfect agreement with the review's findings, we generally cannot disagree with the best practice-based improvements offered as corrective actions.

The attached memo outlines our corrective action plan and timeframe for implementing each improvement. Our response indicates what specific improvements are needed in each element area and estimates how long it should take to implement those improvements. Certain changes can occur immediately while others may take up to 90 days. Also attached is documentation of contract file organization improvements that have recently been implemented, and copies of sole source evaluations related to Element 39. Finally, the memo states Metra's commitment to improving our overall Procurement process through staff training and providing ongoing oversight of Procurement processes to ensure that the implemented improvements are being adopted.

Sincerely,

David F. Simmons
Department Head
Capital Grants

Attachs.

cc: P. Kisielius F. Smalarz L. Ciavarella E. Fernandes

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Metra[SM]

Memorandum

Date: March 24, 2011

To: Dave Simmons, Department Head
Capital Grants

From: F.E. Smalarz, C.P.M., Senior Director
Materials Management

Subject: Procurement System Review
Draft Report Response - Revised

Metra embraces the opportunity and is committed to altering and implementing actions to improve and strengthen our procurement process. Staff is also committed to educating and upgrading the working knowledge of the Procurement staff and instituting oversight that provides feedback to the continuing process for improvement. Additionally, we are committed to providing comprehensive training to Procurement staff and to providing ongoing review of the procurement process as part of Metra's internal audit plans. Besides "hands-on" training, Metra will seek additional sources of training for staff through the Institute for Supply Management and courses provided by the National Transit Institute that are FTA sponsored.

Metra has reviewed the "Draft Report" of the Procurement System Review, and we present the following comments for each outstanding element. Additionally, for each respective element, we indicate whether Metra has already acted upon the recommendation or the length of time it will require to be implemented. If there is no time period indicated the action will be implemented within 30 days from the date of this letter.

Element 2 – Contract Administration System

Metra believes that a Contract Administration System is in place and that addressing the noted deficiencies within this Element No. 2, as Metra indicates it will do below, will ensure improved management of contractor performance.

Areas that were noted with deficiencies are; the contract type is not clear, there is apparent arbitrary action, and A & E type contracts lack review of overhead rates as

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part of the evaluation process. These are addressed and a corresponding course of action is provided in the following listed Deficient Elements.

Metra has a process in place to review the overhead rates on "cost plus fixed fee" contracts that require every contractor to submit the latest Illinois Department of Transportation (IDOT) provisionally approved or audited overhead rates. These rates are closely monitored against the Metra approved rates by the user departments to ensure consistency in the application. The contracts that do not have the approved Illinois Department of Transportation or audited rates are reviewed based on risk factors, and appropriate adjustments are made to the final contractor billings.

The implementation of time and material contracts and negotiating the overhead rates in the beginning as recommended by the FTA in this review would eliminate the issue of final overhead rate adjustments in the future. Element No. 19 further addresses Metra's course of action.

Element 5 – System for Ensuring Most Efficient and Economic Purchase

Metra's budgets are developed with planned and analyzed material or service requirements. Metra develops requirements utilizing past, current and anticipated future needs. The reviewed files were blanket purchase orders that were released off Master Purchase Agreements (MPA). The MPA was publicly bid and had a purchase requisition, complete with an independent cost analysis. The blanket purchase orders were then released by project as funding became available.

Going forward, Metra will include in the contract file the evidence/basis for the developed/planned procurement.

Element 6 – Procurement Policies and Procedures

The review indicated that Metra is complying with FTA requirements as is provided in Metra's solicitation boilerplate.

Metra will include the FTA requirements in our policies and procedures. Estimated 90 days to complete.

Element 7 – Independent Cost Estimates

As part of Metra's Pre-Award Activity, and listed on Metra's Checklist is, "Receiving an Independent Cost Estimate of Contract/Purchase Order Valuation." Metra uses this checklist as part of our contract file administration.

Going forward emphasis will be placed upon the appropriate staff to improve supplying adequate supporting documentation.

Element 12 – Arbitrary Action

The five (5) procurements that were identified as deficient all received multiple bids or proposals, and the respective contract files did contain information about the process that was used for each solicitation.

Metra will ensure that the procurement process will be consistent and will use proper file documentation to avoid arbitrary action. It will consist of proposal tabulation sheet(s) for RFP's and bid tabulation sheet(s) for IFB's. In addition, all award decision making documentation will consist of scoring sheet(s) and negotiation documentation, if required, for all RFP's and technical evaluation for IFB's. See Element No. 42 for additional detail to contract file content and organization.

Element 13 – Brand Name Restrictions

Of the fifty-one (51) procurements reviewed, forty-three (43) were found to be not applicable, one (1) was found to be not deficient, and seven (7) were found deficient. Please note that the FTA/IDOT Addendum for Material Procurements., Page 1, Item No. 3 states: "Approved Equals and Brand Names. Where a feature, component, or item is specified by brand name in the Specifications, the words 'or Approved Equal' are implied. All approvals and request for approvals of proposed Approved Equals must be in writing. Specification by brand name of components or equipment in the Specification shall not relieve Contractor from its responsibility to design and construct the Equipment and perform the work in accordance with the general performance requirements of the Specifications and these General Provisions."

The seven (7) procurements deemed deficient included a statement that equals may be offered by suppliers; however, the salient characteristics were not noted. The Materials Management Department will return purchase requisitions to the requisitioning departments when they do not list the salient characteristics. Following the FTA review this process was immediately implemented and being followed by staff.

Element 15- Contract Term Limitations – Rolling Stock

There was a single contract found to be deficient regarding this Element. It was a six (6) year contract for the "Kitting" of material purchased by Metra and delivered to the contractor for design & engineering of each kit, i.e., the contractor designed and engineered each kit for Metra. Metra then competitively bid out all material for the kits needed for the car rehab program(s). Metra estimated the duration for kitting the

car rehab material to last six (6) years.

Metra will modify the subject contract to conform within the five (5) year period.

Element 16- Written Procurement Selection Procedures

The deficient files refer to Metra's RFP evaluation process. Metra does have established evaluation processes. As noted in the review, proposals are re-scored after interviews. The review noted that this particular aspect of the process is not made apparent or clear to proposers.

Following the FTA review, staff immediately included in all RFP Evaluation Processes that if interviews are to be conducted, the proposer presentation may be re-scored.

Element 18 – Award to Responsible Contractors

As noted in the review, Metra does have a standard checklist process in place on the bid tabulation form regarding the prospective contractor's responsibility and the Federal excluded parties list. The review noted deficiencies in informal procurements. Prior to this review all bid tabulation sheets for formal bids (over $10,000.00) were properly filled out, including debarment.

Following the FTA review and effective immediately, all bid tabulation sheets for formal and informal bids (under $10,000.00) will be checked and initialed by the buyer for responsibility and the Federal excluded parties list. This process is in place and being used by the appropriate staff.

Element 19 – Sound and Complete Agreement

Two (2) contracts were found to be deficient. In both cases the contract documents do not clearly indicate the contract type.

The contract for the blanket Signal Engineering Services is a "not to exceed $500,000.00" contract. The contract specified "total actual costs and fixed fee." Exhibit 5 in the contract is the Employee Compensation Schedule, listing the hourly rates for the contractor's staff, audited rate of 147.5%, and a profit rate of 10%. The file contains supporting documentation for the cost of task assignments. Metra's standard 4400 Cost Form indicates that the costs match the rates and fees listed on Exhibit 5.

The file for the Material Kitting & Manufacturing Engineering of 176 Bi-Level Passenger Cars contains Exhibit 2, Price Proposal. The Exhibit indicates the fixed fee value will include the labor cost and the Burden Rate is 10% of the fixed labor

cost.

As discussed during the review pertaining to A & E blanket type of contracts, Metra did not negotiate the fixed hourly or burden rates prior to contract approval. The actual negotiation occurred at the time a "task" was assigned, and then estimated hours were included along with the hourly and burden rate.

Following the FTA review, staff immediately incorporated the negotiation process to establish the fixed hourly rates and burden rate prior to any contract approval for all blanket fixed-fee type A & E contracts.

Element 24 – Clear, Accurate and Complete Specifications

Of the fifty-four procurements reviewed, seven (7) were found to be deficient. Metra's response is partially addressed in Element 13 above, relating to "Brand Name" reference and listing salient characteristics.

The user departments will be tasked with "beefing-up" specifications and staff will hold pre-bid meetings, when appropriate, to address any questions that potential vendors may have. Staff will also continue to return purchase requisitions that are not complete back to the requisitioning department.

Element 25 – Adequate Competition – Two or More Competitors

Three (3) files were noted as deficient. In all three solicitations, specifications were very specific and detailed. As was noted in the review, Metra has an effective process in place to canvas suppliers when only one bid is received. Additionally, staff does review the solicitation process and canvas responses to determine if there is adequate competition or that a single source is justified.

Metra concurs, a single source justification will be included in the file at the conclusion of the canvas review, or it will be noted that Metra will re-solicit bids/proposals based upon the canvas results.

Element 36 – Evaluation (RFP)

Metra does have established evaluation processes.

Going forward, the Evaluation Criteria "in order of importance" will be noted starting immediately. This process has already been implemented. The appropriate staffs in Professional Services have already reviewed the procedure.

Element 37 – Price and Other Factors (RFP)

Metra uses the Brooks Act method of procurement for A & E and construction management type contracts. The Request for Proposal for these contracts lists the number of contracts that will be awarded and the "not to exceed" amount for each type of contract. The contract award may be for signal design, bridge design, or construction management, etc.

Metra concurs and Element 19 above addresses how future A & E type contracts will be negotiated prior to contract award for fix-fee contracts.

In Element 37 the Reviewer indicates that Metra used the Brooks Method improperly for the non A & E services that were identified during the review. In these contracts, cost was an element of the evaluation; however, the technical portion was opened, evaluated, and scored first, and then the cost portion was opened and evaluated. Finally, the two portions, technical and cost, determined the total score for the respective proposer. The reason justifying keeping cost separate was so that the cost portion would not influence the evaluators' analysis of the technical portion of the proposal.

Element 38 – Sole Source If Other Award Is Inadequate

There was a single contract found to be deficient. At the review it was noted that the contract was inadvertently entered with the wrong general ledger account code and should not have been funded with federal funds.

Metra concurs and the funding source has been corrected and federal funds are not being used. Since no Federal funds were involved, Metra requests that the deficiency be eliminated from the FTA report.

Element 39 – Cost Analysis Required (Sole Source)

Of the three (3) procurements reviewed for this requirement, all three (3) were found to be deficient. The purchase order file for door closers and anti-freeze devices did contain a price analysis and Metra's Audit Department cost analysis summary (see attached Element 39). Metra's Audit Department conducted an independent evaluation of price as the vendor declined to provide costs.

The third purchase order identified for Fleet Maintenance was inadvertently coded incorrectly (input error), which identified it using Federal funds. It is not funded with Federal funds and the funding source has been corrected. *See Element No. 38.*

It is Metra's practice to perform a cost analysis on all federally funded sole source procurements. The appropriate staff has reviewed the required process to ensure

its inclusion in the contract file.

Element 41 – Cost or Price Analysis

Fifty-three (53) procurements were reviewed. Six (6) were found to be not deficient, and forty-seven (47) were found deficient.

While the review did find some good examples of price analysis, the documentation of this analysis was missing in the majority of the files reviewed.

Metra concurs and will implement the recommendation and modify Metra's bid tabulation document sheet to include a statement, based upon staff's analysis, that the price quoted by the lowest responsive and responsible bidder is fair and reasonable based on competitive bids. Additionally, the price/cost analysis requirement is included in the contract file checklist. The process has been implemented with the appropriate staff.

Element 42 – Written Record of Procurement History

Of the fifty-four procurements reviewed, fourteen (14) were found to be deficient. In general, there is a lack of file organization at METRA and minimal documentation on procurement planning activities. In the fourteen (14) procurement files found to be deficient, the reviewer was unable to determine the reason for the contractor selection or the basis for the contract price.

Metra's course of action is as follows:

A "Contract/Purchase Order File Content Check List Form for Contracts/Po's Over $10,000.00" is in the file for all contracts solicited and awarded using the IFB or the RFP process. The checklist consists of Date, Initials (Buyer), and Activity of the following:

Pre-Award Activity

1. *Requested Independent Cost Estimate of Contract/Purchase Order Valuation*
2. *Received Independent Cost Estimate of Contract/Purchase Order Valuation*
3. *Copy of Requisition*
4. *Invitation for Bids Memorandum with Pre-bid summary*
5. *Certified Copy of Invitation for Bids*
6. *Internal Request for Quotation Checklist to Appropriate Using Department*
7. *Addenda and/or other External Correspondence/Internal Memoranda*
8. *Applicable Exhibits Included*
9. *Bid/Proposal Tabulation, Blue Copy of P.O. or Original Contract*

10. *Received Evaluation Form IFB/RFP Evaluation Letter and Supportive Selection Documentation sent to/from Using Department*
11. *Internal/External Letters/Memoranda, i.e. DBE Correspondence, Short List, Insurance*
12. *Protest Notification Forward to Grants Department (If Applicable)*
13. *Protest Resolution Forward to Grants Department (If Applicable)*
14. *4400 Form for A & E/Professional Services Contracts*
15. *Price/Cost Analysis (When Required)*

Post Award Activity

1. *Performance Labor Material Bond (Construction Only)*
2. *Notice to Proceed/Vendor Acknowledgment*
3. *Contracts Completion Form*
4. *Contract/P.O. Complete/100% Received*

The file also has a list of vendors solicited for an IFB or RFP. The requisition is reviewed by Metra's Grants Department to assure that funds are available prior to processing the IFB or RFP solicitation.

Additionally, see the attached instructions for the Organization of Contract File Folders, Operating Files and Purchase Orders (Capital and Operating). This process is in place and being used by the appropriate staff.

Element 44 – Out of Scope Changes

The review noted three (3) contract change orders in procurements that were out of scope and were not treated as sole source procurements.

The change order for the installation and service of core routers consisted of extending the contract completion date by one year at the same pricing, and to increase the value of the contract for the work performed during this period. The fees of the original contract remained the same during the extended period of performance.

Metra concurs and the processing for the additional routers should have been done as a sole source.

In reviewing the ticket vending machine file for the change order, Metra found that the number of machines was increased from 15 to 29, and the file has documentation dated March 26, 2010 from Metra's Audit Department. The documentation states that the "quoted price for the Change Order appears reasonable." The additional 14 vending machines were ordered at the direction of the Executive Director.

Metra concurs and the processing for the additional machines should have been done as a sole source.

The change order for the ADA improvements at the BNSF – Route 59 station upgrade consisted of widening the existing platform, adding additional lighting, sidewalk widening, landscaping, and replacing an existing bike rack that was in place prior to the improvements. The bike rack was removed for the improvements but was damaged in the process and was not salvageable.

Metra concurs and the processing for the bike rack should have been done as a sole source.

Element 46 - Progress Payments

The deficient files were lacking the statement that "title for the completed work will transfer to Metra upon payment." Metra's construction contracts do contain the appropriate language. However, the deficient files lacking the appropriate language were procurements under $10,000.

Metra concurs will notify all bidders that Federal statutory and regulatory applicable requirements do apply for federal funded purchases. Additionally, required clauses will be maintained in the respective procurement file. This process will be in place within 30 days.

Element 48 – Cost Plus Percentage of Cost

The Element's Discussion listed on the FTA Procurement System Review states:

"Of the forty-four (44) procurements reviewed for this requirement, forty-one (41) were not deficient and three (3) were found deficient. In two (2) cost-plus-fixed-fee procurements for construction management services, there was a fixed-fee by task order rather than an overall fixed-fee for the contract. Under the cost–plus-

percentage-of-cost methodology there is no stated limit of fee the supplier may be able to receive. The procurement for ticket vending machines was documented as a cost-plus-fixed-fee contract; however, no fixed-fee was noted in the compensation provisions. METRA should include a total fixed-fee for all cost type contracts."

Metra does not concur. Metra's 4400 Cost Form 4400 for construction contracts does have a fixed-fee field on the form. However, the contract for the vending machines states: "the prices stipulated on Metra's Form 4400 (or any other cost or price schedule) which is either attached as Exhibit 2 of this Agreement, or is incorporated by reference, as directed by Metra." This contract did not require a Form 4400 since price lists were in Exhibit 2. Exhibit 2 consisted of three price lists:

the first price list is for the vending machines at a unit price of $1,234.94 each; the second price list is for the Data System Elements at a lot cost of $64,800.00, and in addition, a total of four lots of various spare parts at a total cost of $105,070; and the third price list is for various communication, transactional, maintenance and customer support fees at a rate of per transaction or per month fees.

The other two (2) deficient findings pertained to A & E blanket type of contracts. Metra did not negotiate the fixed hourly or burden rates prior to contract approval. The actual negotiation occurred at the time a "task" was assigned, when estimated hours were included along with the hourly and burden rate.

Metra concurs and effective immediately the process has been implemented for negotiating to establish the fixed hourly rates and burden rate done prior to any contract approval for all blanket fixed-fee type A & E contracts.

Element 52 – Serial Price Negotiations (A & E)

Two (2) A & E procurements were reviewed for this requirement and one (1) was found deficient due to lack of documentation on negotiations conducted. There was no documentation on how the final blanket purchase order value was arrived at or any evidence of negotiations.

This contract was one of 8 awards issued from Request for Proposal No. 87659, and the original scoring documentation is located in the first contract, K30869, and is referred to in the contract file that the review found deficient. However, the value of the contract is noted on the Request for Proposal as a "not to exceed" amount, and in this case, that contract had a set value of $500,000.00. In addition, Metra did not negotiate the fixed hourly or burden rates prior to contract approval. The actual negotiation occurred at the time a "task" was assigned when estimated hours were included along with the hourly and burden rate.

Metra concurs and effective immediately the process has been implemented for negotiating to establish the fixed hourly rates and burden rate done prior to any contract approval for all blanket fixed-fee type A & E contracts.

Element 56 – Clauses

The 23 deficient files lacking the appropriate FTA Clauses were identified against Metra's procurements under $10,000.

Metra concurs and will notify all bidders that Federal statutory and regulatory applicable requirements apply for all federally funded purchases. Additionally, required clauses will be maintained in the respective procurement file. This process will be in place within 30 days.

Page 11

Other Matters – Buy America Requirements

Metra is aware of Buy America requirements pertaining to Rolling Stock procurements and has completed "pre" and "post" Buy America audits for past rolling stock procurements.

Metra concurs that the procurement of rubber tire cargo vans should have been done in accordance with Buy America requirements. Staff is in the process of reviewing what is required for rubber tire vehicles and then they will perform the appropriate analysis and reviews.

Element 39

Metra

Memorandum

To: Carolyn Capranica, Department Head
Procurement

November 17, 2009

From: Eric Fernandes, Director
Audit

Subject: Sole Source PO 91173 totaling $329,783.58 for
Door Closers & Anti-Freeze System Components
Vapor Stone Rail Systems – IFB/RFP R10716

As requested on 11/6/09, Audit has reviewed PO K91173, the Sole Source Bid for (14) fourteen door kits from Vapor Stone Rail Systems to be used in a Pullman commuter coach rehabilitation project at the KYD Shop. Based on cost information provided by the vendor on 11/12/09, the quoted price appears reasonable.

Our scope included an analysis of the cost of the (8) eight parts involved. We relied upon Mechanical for the scope of the work and the quantities necessary to complete the work.

Please call me if you have any questions or need additional information.

EF/dh

cc: F. Smalarz
P. Kisielius
R. Soukup

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Memorandum

November 6, 2009

To: File

From: Carolyn J. Capranica, C.P.M.
Department Head, Procurement

Subject: Purchase Order No. K91773
Vapor Stone Rail Systems
Door Closers and Anti-Freeze Systems
Price Analysis

The following is a price analysis for the subject purchase order.

Price Analysis
Vapor Stone Rail Systems

Line Item	Vapor Part No.	Description	Previous Unit Price	Current Unit Price	% +/-
1	59146581-10	Operator, Door Assembly – L.H.	$3,951.51	$3,951.51	0%
2	59146580-10	Operator, Door Assembly – R.H.	$3,951.51	$3,951.51	0%
3	5922781700	Light Assy. Door Closing Display	$117.70	$117.70	0%
4	58440331-04	Cover, Switch Assy.	$438.70	$438.70	0%
6	16210004-18	Thermostat, Bi-Metal FH Close 30 DGF	$162.64	$162.64	0%

The above price analysis compares prices on the subject purchase order to previous Purchase Order Nos. B90852 dated 8/18/09 and K90554 dated 8/18/09. Since there is no increase from the previous purchase orders Procurement finds the prices quoted to be fair and reasonable.

Attachment: B90852 Price List
K90554

Distribution: P. O. File
Vendor File

b:VaporStoneRailSystemsPriceAnalysisK91773

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Memorandum

March 14, 2011

TO: DISTRIBUTION

FROM: Carolyn J. Capranica, Department Head
Procurement

SUBJECT: Organization of Green File Folders, Operating Files and Purchase Orders (Capital and Operating)

Attached for your use are guidelines that should be followed for file folders and blue folders.

1. Organization of File Folders for:

   A. All Formal Capital Purchase Orders Over $10,000.00 (Capital and Operating)

2. Organization of Blue Folders for:

   A. All Formal Purchase Orders Over $10,000.00

Please remember that is is your responsibility to organize your file folders according to the guidelines.

If you have any questions, please feel free to comment.

DISTRIBUTION:
P. Kisielius
F. Smalarz
C. Gamboa
L. Lee
K. Noble
U. Damian
D. Johnson
J. Zellers

I:OrganizationFileFolders

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PART I - RIGHT SIDE OF FOLDER

ORGANIZATION OF GREEN FILE FOLDERS

FOR

ALL FORMAL CAPTIAL PURCHASE ORDERS OVER $10,000.00

Part I - For Pre Award Documents

Part II - For Post Award Documents

Part I - Pre Award
(from bottom to top)

LEFT

All Pre Award correspondence in chronological order (earliest on bottom to latest on top).

1. Buyers Worksheet.
2. Summary of Metra Procurement Pre-Bid/Memo to Management Coordinator.
3. Distribution Approval Memos.
4. Request for Bids from vendors.
5. No Offer Bid Sheets.
6. Cost Estimates from Materials.

Part I - Pre Award
(from bottom to top)

RIGHT

1. Copy of Purchase Requisition.
2. Invitation for Bids Speed Memo.
3. Certified Copy of Invitation for Bids.
4. Request for Quotation Checklist with Bidders List.
5. Blank Copy of Request for Quotation with all Exhibits.
6. Addendums (earliest on bottom to latest on Top).
7. Bids Received.
8. Bid Tabulation Sheet.

PART II - LEFT SIDE OF FOLDER

Part II - Post Award
(from bottom to top)

LEFT

All Post Award correspondence in chronological order (earliest on bottom to latest on top).

1. Technical Evaluation/Non-Responsive form to and from user department.
2. Letter to and from Vendors.
3. Memos/Canvass relating to cost/price Analysis for single bid/sole source (if applicable).
4. Purchase Order/Contract Check List/Closeout List.

Part II - Post Award
(from bottom to top)

RIGHT

1. Documents from the Blue Folder.
   a. Bidders List
   b. Copy of Purchase Requisition.
   c. Certified Copy of Request for Proposal/Quotation.
   d. Correspondence in chronological order (earliest on bottom to latest on top).
   e. Completed Routing Slip from front of blue folder mounted on 8½" x 11" sheet.
   f. Summary of Procurement Form
2. Completely Executed Purchase Order (blue copy) with all Exhibits.
3. Acknowledgement Copy of Purchase Order.

ADDITIONAL INSTRUCTIONS

1. Label and Identify Projects in Green Folders according to April 28, 2009 memorandum and examples attached.

2. All documents will be punched at the top.
   DO NOT put documents in the folder upside down.

ORGANIZATION

OF

FORMAL OPERATING PURCHASE ORDERS OVER $10,000.00

Operating purchase orders will not use a green folder. They will be bound with Acco fasteners in the following order from bottom to top: Pre-Award/Post-Award

Pre-Award (from bottom to top)

All pre-award correspondence in chronological order (earliest on bottom to latest on top).

1. Copy Purchase Requisition
2. Cost Estimate
3. Buyers Worksheet
4. Blank copy of Request for Quotation with all Exhibits
5. Summary of Metra Procurement Pre-Bid/with memo to Management Coordinator
6. Distribution Approval Memos
7. Invitation for Bids (Speed) Memo
8. Certified Copy of Invitation for Bids
9. Request for Quotation Checklist with Bidders List
10. Addendums (earliest on bottom to latest on top)
11. No Bid Offer Sheets
12. Bids Received - Strip and dispose all unnecessary documents retaining only those that have been signed, notarized, etc., by bidder.
13. Bid Tabulation Sheet

1

Post-Award (from bottom to top)

All post award correspondence in chronological order (earliest on bottom to latest on top).

1. Technical Evaluation to and from User Department

2. Letters to and from Vendor

3. Purchase Order/Contract Checklist/Close Out

4. Documents from the Blue Folder:

   a. Bidders List
   b. Copy of Purchase Requisition
   c. Certified Copy of Invitation for Bids
   d. Correspondence in chronological order (earliest on bottom to latest on top).
   e. Completed Routing Slip from front of Blue Folder mounted on 8-½" x 11" sheet
   f. Summary of Procurement Form

5. Completely Executed Purchase Orders (blue copy) with all Exhibits

6. Xerox Copy of Purchase Order

2

ORGANIZATION OF BLUE FOLDERS

FOR

PURCHASE ORDERS

LEFT SIDE (from bottom to top)	RIGHT SIDE (from bottom to top)
Correspondence in chronological order (earliest on bottom to latest on top). 1. Copy of Certified Invitation for Bids. 2. Recommendation for Award Memo from the Using Department (if applicable). 3. Memo relating to a price/cost analysis for a single bid and sole source (if applicable). 4. Summary of Procurement Form (always on the top).	1. Bidders List. 2. Original of Purchase Requisition. 3. Purchase Order with all the Exhibits.

Memorandum

Date: April 28, 2009

To: Distribution

From: F.E. Smalarz, C.P.M.
Senior Director, Materials Management

Subject: Labeling & Identifying Projects in Green Folders

Attached are four (4) examples of how we want to see the green folders labeled. This description, in addition to the Contract/Purchase Order/MPA Number, will aid auditors and others looking for files.

Effective immediately, please label all green folders currently in your possession, all future green folders and any green folders pulled from the file shelves for reference.

If you have any questions, please come and see me.

Thank you.

Attachments

DISTRIBUTION
Department Heads
Contracting Agents
Senior Buyers
Buyers
P.A. Kisielius

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[redacted]

EX. 1
P. 1 of 2
(PRIOR TO AWARD)

P.A. SYSTEM PARTS

RFP
OR
IFB # 96268

RFP/
IFB - 5/8/04 } DATED ADVERTISED.

OPEN - 5/27/04
- DUE

PROJECT No. AZ3403 - 51423004
CRD - 122.

FRONT

[redacted]

EX. 1
P. 1 of 2

BACK

P.A. SYS. PARTS

[redacted]

EX. 2
P. 1 OF 2

K 43392, 6/16/04
GFI GENPARE
P.A. SYSTEM PARTS

RFP OR
IFB # 96268
RFP/IFB - 5/8/04
OPEN/DUE - 5/27/04

PROJECT No. AZ3403 - 51423004
ORD - 122.

FRONT

[redacted]

EX. 2
P. 2 OF 2

BACK

GPI GENPARE
P.A. SYS. PARTS

[redacted] EX. 3
P. 1 of 2

K 55338, 8/3/05

TRIANGLE ENGINEERED PRODUCTS
OVERHAUL TBU CYLINDER LINERS.

RFP/
IFB # 15491

S/S

DUE: 5:00 P.M., C.S.T.
APRIL 6, 2005.

PROJECT No. CW3907-51423004
MET-125.

FRONT

TRIANGLE
OVERHAUL TBU LINER [redacted]

[redacted]

EX. 3

P. 2 of 2

BACK

TRIANGLE

VRNL. TBU LINERS

[redacted]

EX. 4
P. 1 of 2

K 5470R

ELECTRIC MOTOR CORP.

OVERHAUL HIGHLINER CAR
MOTOR ALTERNATORS.

IFB #- 15451 — REBID

IFB - ~~10/19/04~~ — 12/11/04

OPEN - ~~10/27/04~~ — 01/06/05

PROJECT No. CK3806-51422004
IL-90-X474/MET-062.

11/11/04
HOLD
FOR REVISED
SPEC.

FRONT

[redacted]

EX. 4
P. 2 of 2

BACK

ELECTRIC MTR. CORP.
OVERNL. MA'S

K90128

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(l) and the applicable regulations in 49 CFR Part 661.5.

Date February 16, 2009

Signature Karl J. McMillan

Company Name Joe Rizza Ford, Inc.

Title Treasurer/Secretary

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (l) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

K90086

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, Iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(l) and the applicable regulations in 49 CFR Part 661.5.

Date 03-09-09

Signature

Company Name SUTTON FORD INC

Title President

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (l) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

K90083

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date March 25, 2009

Signature [signature]

Company Name OTTAWA FORD LM, INC.

Title PRESIDENT

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

K90078

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(l) and the applicable regulations in 49 CFR Part 661.5.

Date March 25 - 2009

Signature

Company Name Terry's Ford Lincoln-mercury of Peotone

Title Commercial Fleet mgr.

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (l) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

K05158

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date 10-6-10

Signature Linda Sovich

Company Name Terry's Ford Lincoln

Title Fleet Manager

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

Metra
ne way to really fly

547 W Jackson Blvd Chicago Illinois 60661 (312) 322-6900 TTY#1-312-322-6774

Memorandum

DATE: March 20, 2012

TO: Procurement, Professional Services/Contracts and Materials Management Staff

FROM: Paul A. Kisielius, Senior Division Director
General Administration

SUBJECT: Procurement System Review Training

Attached are the Metra responses and corrective action to the Elements (Element Numbers 2, 5, 7, 59 and 60) that we will be reviewing Friday at the training session. Please read and be ready to discuss the respective responses.

Contract Administration System (Element #2):

Metra's Revised Response: The PSR noted that contract types should be clearly stated for all contracts and they should be administered in the manner appropriate for the specific type of contract. In addition, a contract administration system should be documented in policies and procedures.

With respect to the contract administration issue stated above, please see the attached proposed newly created Contract Management and Administration procedure, PU-03-RC.

The PSR also noted that adjustments to provisional billing rates must be done on an annual basis for all cost-plus-fixed-fee contracts, including the resulting differences in invoiced versus paid amounts to the FTA. Metra's adjustments are described below.

Provisional Billing Rate Adjustments.

Provisional overhead rates shall be used for billing purposes initially. All provisional overhead rates shall be replaced with audited rates in accordance with federal cost principles (FAR Part 31) through audits performed by certified independent accountants as arranged and paid for by the Consultant being audited. Audited rates shall be submitted annually during the term of the contract. Annual audited rates shall be submitted through the Consultant to Metra's Contacting Officer within four months of the end of each firm's current fiscal year. Upon written approval of Metra, the audited rates will be used to adjust overhead billed for work performed during the Consultant's and Subconsultant's fiscal year upon which the rate is based. The rate will then be used as the provisional rate going forward until the next year's rate is approved by Metra. Overhead billed for the final contract year will be based on the audited rate selected by Metra, who shall have the option to use, at its sole and absolute discretion, an audited rate used under any prior contract year or an average of one or more prior audited rates, as Metra deems appropriate under the circumstances.

Overhead rates are assumed to be the Consultant's field office rate, unless otherwise agreed to in writing by Metra's Contracting Officer. Metra, in its sole discretion, may approve the use of a home office overhead rate where it is determined that it is in Metra's best interest to have work performed at the Consultant's home office.

Metra reserves the right to withhold payments from any firm which fails to provide Metra with an acceptable audited rate or other documentation required by Metra, until such time as an acceptable audit or acceptable documentation is received and approved, in writing, by Metra.

In addition, the contract value may be adjusted in accordance with the approved overhead rate. The fixed fee dollar amount will not be changed in any way through the overhead adjustment process stated in this section. Any amounts paid to any employee in excess of the approved salary rate or hours shall be the sole responsibility of the Consultant and shall not be passed onto Metra in any manner, including but not limited to, increases in the overhead rate.

Cognizant Agency Audited Rates.

As required by FTA Circular 4220.1F (page VI-14, Rev. 3, 02/15/11), if the Consultant and/or Subconsultants have FAR indirect cost rates established by a cognizant Federal or State government agency, and if those rates are not currently under dispute, then such audited rates will be applied as set forth below. Consultant agrees to provide such rates to Metra. Consultant also agrees to require its Subconsultants to provide such rates to Metra if such rates have been established by a cognizant Federal or State government agency for the Subconsultants.

Metra payments made using the provisional overhead rate will be adjusted by the Consultant to conform with the audited overhead rate approved by Metra for each year. The Consultant shall submit such adjustment within sixty (60) days upon approval of the overhead rate by Metra for each year. The Consultant will prepare an invoice to Metra for the overhead rate adjustment and provide a computation listing each invoice number and the amount paid for the prior year, the provisional overhead rate applied, the audited and/or accepted overhead rate approved by Metra, and pay or invoice as appropriate, the resulting difference in the amount either due Metra or the Consultant in accordance with the computation made.

See attached revised pages one (1) through three (3) of Metra's standard Agreement for Professional and Consulting Services.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is

following procedures and corrective actions consistently and to issue the report as recommended.

CONTRACT AND MANAGEMENT ADMINISTRATION

I. PURPOSE

To define the procurement and professional services division and the Buyer and Contracting Officers roles, responsibilities and authorities in the management and administration of contracts.

II. POLICY

The Contracting Office/Buyer is responsible for the legal, technical and administrative sufficiency of Metra contracts and shall seek legal, technical and other advice within Metra in fulfilling these responsibilities.

Contract Administration is the process of enforcing the terms of a contract through such actions as evaluating performance and progress, monitoring contract deliveries, inspections, approval of payments and closeout.

The Contracting Officer/Buyer shall maintain records detailing the history of each procurement. These records shall be placed in the master file and include:

- The rationale for the method of procurement;
- Selection of contract type;
- Reasons for contract selection or rejection;
- The basis for the contract price:

Where appropriate, the procurement file should contain:

- Purchase request, acquisition planning information, and other pre-solicitation documents
- Evidence of availability of funds
- Rationale for the method of procurement (negotiations, formal advertising)
- List of sources solicited
- Independent cost estimate
- Description of work/scope of services
- Copies of published notices of proposed contract action
- Copy of the solicitation, all addenda, and all amendments
- Liquidated damages determination
- An abstract of each offer or quote
- Contractor's contingent fee representation and other certifications and representations
- Source selection documentation if applicable
- Contracting Officer/Buyer's determination of contractor responsiveness and responsibility

- Cost of pricing data
- Determination that price is fair and reasonable including an analysis of the cost and price data, required internal approvals for award
- Purchase requisition indicating availability of funds
- Notice of award
- Notice to unsuccessful bidders or offerors and record of any debriefing
- Record of any protest
- Bid, Performance, Payment, or other bond documents, and notices to sureties
- Required insurance documents, and
- Notice to proceed
- Purchasing Department Routing Sheet
- Executed contract and notice to award
- Post award correspondence
- Approvals or disapprovals of waivers and deviations
- Modifications and changes in the terms or conditions of the contract, including a rationale for the change, determinations regarding their scope, and cost/price analsis of any price increases or decreases.

In order to ensure a sound and complete agreement, the Contracting Officer/Buyer will ensure the *IFB/RFP Index Section* is accurate, complete, and included in the master contract file.

Exhibit 1-F

AGREEMENT FOR PROFESSIONAL AND CONSULTING SERVICES

This Agreement is entered into this_____day of _____,_____ in Chicago, Illinois, by and between the Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra, Metropolitan Rail ("**Metra**"), a public corporation under Illinois law, and

_____("**Consultant**"), having offices located at Consultant and Metra are sometimes collectively referred to as **"Parties."** In consideration of the promises and agreements set forth, the Parties agree:

1. **SCOPE AND DESCRIPTION OF SERVICES**.

Consultant will perform the following services ("**Work**"): _____

_____

2. **COMPENSATION**.

This is a cost-plus-fixed fee type of contract. The total estimated costs for the Work performed under this contract is $XXXXX. The fixed fee for this Work is $XXXXX. The total cost-plus-fixed-fee amount for this contract, including all task orders released hereunder is $XXXXX. Metra agrees to pay, and Consultant agrees to accept as full payment for the Work, the provisional indirect and labor rates, as revised and justified by the Consultant, stipulated on Metra's Form 4400 (or any other cost or price schedule) which is attached as Exhibit 2 of this Agreement. The amount of the fixed fee will not change under this Agreement unless the level of effort or complexity of the Work changes. In no event, shall the fixed fee exceed 10% of the Prime Consultant's Direct Labor and Overhead costs. With respect to the overhead rate described on a Form 4400, Consultant will include the agreed-upon provisional billing rate approved by Metra.

Provisional overhead rates shall be used for billing purposes initially. All provisional overhead rates shall be replaced with audited rates in accordance with federal cost principles (FAR Part 31) through audits performed by certified independent accountants as arranged and paid for by the Consultant being audited. Audited rates shall be submitted annually during the term of the contract. Annual audited rates shall be submitted through the Consultant to Metra's Contacting Officer within four months of the end of each firm's current fiscal year. Upon written approval of Metra, the audited rates will be used to adjust overhead billed for work performed during the Consultant's and Subconsultant's fiscal year upon which the rate is based. The rate will then be used as the provisional rate going forward until the next year's rate is approved by Metra. Overhead billed for the final contract year will be based on the audited rate selected by Metra, who shall have the option to use, at its sole and absolute discretion, an audited rate used under

any prior contract year or an average of one or more prior audited rates, as Metra deems appropriate under the circumstances.

Overhead rates are assumed to be the Consultant's field office rate, unless otherwise agreed to in writing by Metra's Contracting Officer. Metra, in its sole discretion, may approve the use of a home office overhead rate where it is determined that it is in Metra's best interest to have work performed at the Consultant's home office.

Metra reserves the right to withhold payments from any firm which fails to provide Metra with an acceptable audited rate or other documentation required by Metra, until such time as an acceptable audit or acceptable documentation is received and approved, in writing, by Metra.

In addition, the contract value may be adjusted in accordance with the approved overhead rate. The fixed fee dollar amount will not be changed in any way through the overhead adjustment process stated in this section. Any amounts paid to any employee in excess of the approved salary rate or hours shall be the sole responsibility of the Consultant and shall not be passed onto Metra in any manner, including but not limited to, increases in the overhead rate.

Cognizant Agency Audited Rates.

As required by FTA Circular 4220.1F (page VI-14, Rev. 3, 02/15/11), if the Consultant and/or Subconsultants have FAR indirect cost rates established by a cognizant Federal or State government agency, and if those rates are not currently under dispute, then such audited rates will be applied as set forth below. Consultant agrees to provide such rates to Metra. Consultant also agrees to require its Subconsultants to provide such rates to Metra if such rates have been established by a cognizant Federal or State government agency for the Subconsultants.

Metra payments made using the provisional overhead rate will be adjusted by the Consultant to conform with the audited overhead rate approved by Metra for each year. The Consultant shall submit such adjustment within sixty (60) days upon approval of the overhead rate by Metra for each year. The Consultant will prepare an invoice to Metra for the overhead rate adjustment and provide a computation listing each invoice number and the amount paid for the prior year, the provisional overhead rate applied, the audited and/or accepted overhead rate approved by Metra, and pay or invoice as appropriate, the resulting difference in the amount either due Metra or the Consultant in accordance with the computation made.

Consultant shall notify Metra at least 60 days prior to when total estimated costs are expected to reach 85% of the total estimated costs hereunder.

The Total Price also includes the cost of all applicable taxes (where Metra is not exempt), bonds, if required, and other charges of every kind and nature. The Total Price shall not include, and Metra shall not pay, taxes or fees from which Metra is exempt. Metra is exempt from various federal taxes all state and unit of local government taxes, and registration and license fees. Consultant shall promptly notify Metra, and afford it the opportunity before payment of any

taxes, to contest said claims in the manner and to the extent it may elect, and to settle or satisfy such claims. Consultant shall submit all invoices on Metra Form #B100R107, which is incorporated into and made a part of this Agreement, along with all appropriate support documents, for all amounts to be paid by Metra under this Agreement. Invoices must be addressed to the "Accounts Payable Section" for payment and must show Metra Contract No. _____and Account No._____.

Eligible Costs

Reimbursing costs.

(1) For the purpose of reimbursing allowable costs, the term "costs" includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

System for Ensuring Most Efficient and Economic Purchase (Element #5):

Metra's Revised Response: The PSR noted that this was a system wide deficiency pertaining to this Element. The review noted that Metra should base contract prices on an independent cost estimate and anticipated future use rather than approved budgets. Please see proposed revised PU-05-RC, PU-06-RC, PU-07-RC, PU-08-RC, and PU-14-RC. Metra procedures now require an independent cost estimate that includes and documents, at a minimum, an analysis of elements to determine the amount of the contract, foreseeable requirements, past and current usage, and possible procurement methods. To assist providing the correct information in a contract file, Dr. Harris provided an Appendix H, "Contract/Purchase Order File Index," which Metra has revised and re-titled, "Checklist – IFB's and Checklist - RFP's" (see attached).

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

FORMAL QUOTATIONS AND AWARD

I. PURPOSE

This procedure provides instructions for the solicitation and award of bids for purchases of materials and services, where the estimated cost is $10,000.00 or more.

II. POLICY

This procedure will be used when the acquisition of materials or services will equal or exceed $10,000.00, unless specifically exempted. See Purchasing Exemptions (Exhibit I).

Acquisitions under $10,000.00 may be made utilizing Informal Quotations and Award PU-04-RC. If less than $500.00, use Direct Purchases, PU-13-RC, or Procurement Card Purchases, PU-21-RC.

For the acquisition of professional services, see the appropriate procedure, PU-06-RC, PU-07-RC or PU-08-RC.

The bid solicitation process will contain procedures for including Disadvantaged Business Enterprises on bidders' list for the commodity or service being purchased, where appropriate.

Whenever possible and practical, Metra will endeavor to secure three or more bids (quotations) in the open market. If less than two bids are obtained, the reasons should be documented. When a specific, brand name or vendor is specified, a written memorandum explaining the reasons for the restriction must be provided. The memorandum must be signed by the manager of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director, as appropriate, and the Executive Director.

For purchase orders that include capital funds, a price/cost analysis and history of procurement must be prepared and maintained on file for a single bid or sole source procurement.

A sole source must be the only available vendor that can provide the materials or services. If capital funding is involved, approval of a sole source may be required.

Only bids received by the announced due date and time will be considered.

Solicitation for bids among vendors will be made by media advertisements, (Invitation for Bids/Requests for Proposals). See Exhibit II in PU-04-RC, for Informal Quotations and Awards), and Metra's corporate website.

II. POLICY (Continued)

Purchase orders will be awarded to the lowest responsive and responsible bidder.

III. DEFINITIONS

Blue Folder: See Glossary

Requisition: See Glossary

Sole Source: See Glossary

IV. RESPONSIBILITIES

Requisitioner/User
Submits requisition(s) and provides adequate specifications for items desired in accordance with Requisitioning of Materials and Services, PU-02-RC. Prepares memorandum justifying sole source requirements, signed by the Director of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director as appropriate, and the Executive Director. Assists Procurement Division or Professional Services/Contracts Division in providing specifications and clarifying specifications, as required. Reviews bidders to verify their ability to meet technical specifications. Prepares independent cost estimate as required to establish a base cost that is to incorporate and document an analysis as partial elements to rationalize the amount of the contract; foreseeable requirements, past and current usage, and possible procurement methods that are relevant for the award of a Contract.

Budget Authority
Verifies availability of funds in the appropriate budget account. Review signatures and completeness of forms. Department Head, Director, or other similarly designated person signs approval in box #25 on requisition after checking budget. Maintains a record of all requisitions and purchases to ensure that budget limitations are not exceeded. Verifies proper account/distribution codes.

Procurement Division or Professional Services/Contracts Division
Determines the method of obtaining quotations. Solicits quotations and selects the lowest responsive and responsible bidder. Where possible, solicits bids to secure a minimum of three qualified vendors. Receives, opens and reads aloud and records all bids received. If capital funds are involved, makes the award with concurrence from General Development Department. For items that are sole source, prepares memorandum justifying sole source requirement to Materials Management Department Head. Ensures memorandum is signed by the Department Head, Materials Management, Deputy Executive Director, and the Executive Director. Prepares purchase order/contract and obtains signatures. Distributes

PROFESSIONAL SERVICE CONTRACTS (GRANT-FUNDED, NON-BROOKS)

I. PURPOSE

This procedure sets forth policies and instructions for the acquisition, administration, and termination of professional service contracts and blanket professional service contracts (hereafter, collectively referred to as "Professional Service Contract(s)" unless otherwise stated) by Metra, which are funded by federal, state, or local grants and which do not involve Architectural and Engineering services (NOTE: See PU-07-RC for Professional Service Contracts that are not funded by capital funds, and PU-08-RC for Architectural and Engineering Service Contracts).

II. POLICY:

GENERAL:

Professional Service Contracts are exempt from competitive bidding pursuant to MET Ordinance 94-18 or NIRC Ordinance 94-1, but must follow grant requirements for the applicable competitive negotiations process. Professional Service Contracts using capital funds must be publicly advertised and competitively negotiated procurements in accordance with FTA guidelines. Proposals will be solicited in a newspaper with general circulation, and specific firms from lists of eligible vendors will be solicited, in order to reach an adequate number of professional firms. The solicitation and contract documents should follow FTA Circular 4220.1F and the Procurement Regulations.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria.

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at

Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of a Professional Service Contract will be described in the respective Request for Proposals ("RFP") prepared by the Requisitioner/User. Services which are A & E services according to the Brooks Act, even though performed by a non-A & E firm, shall be considered A & E services. (See PU-08-RC).

Each RFP will be submitted by the Requisitioner/User to the Professional Services/ Contracts Division, together with a list of the specific Evaluation Criteria for the subject project, a statement of work that clearly, accurately and unambiguously describes the technical requirements for the service(s) to be procured, an independent Cost Estimate prepared by the Requisitioner/User to establish a base cost for budgetary purposes, that is to incorporate and document an analysis as partial elements to rationalize the amount of the contract; foreseeable requirements, past and current usage, and possible procurement methods, and all other cost and non-cost related considerations the Requisitioner/User deems relevant for the award of a Professional Service Contract. The initial RFP prepared by the Requisitioner/User will be reviewed by the Professional Services/ Contracts Division who, after such review and in concert with the Requisitioner/User, will prepare the formal RFP. The formal RFP will be used by the Professional Services/ Contracts Division for the solicitation of proposals from Offerors.

Proposals with respect to a given RFP will be solicited through the use of advertisement in a newspaper of general circulation, e-mail notification to Offerors selected from Metra's vendor database, and posting on Metra's web site. The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, may coordinate the scheduling of a pre-proposal conference to clarify requirements and answer questions from potential Offerors. Attendance at such pre-proposal conference however, by potential Offeror(s) is not mandatory and absence at such a conference will not be used to treat an Offeror as non-responsive.

The evaluation of the proposals received with respect to a given RFP will be performed by the respective Evaluation Committee. Proposals with respect to an RFP will be first received by the Professional Services/ Contracts Division and first opened, in the presence of a witness, on the respective proposal due date. The Professional Services/ Contracts Division will perform an initial review and complete a Responsibility Determination Form with respect to each proposal. Any potential Offeror which does not demonstrate that they are a responsive Offeror necessary to assure achievement of the RFP objectives may be eliminated from further consideration. Proposals accepted by the Professional Services/

PROFESSIONAL SERVICE CONTRACTS (NON-GRANT-FUNDED, NON-BROOKS)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating Professional Service Contracts and Blanket Professional Service Contracts (hereafter, collectively referred to as "Professional Service Contract(s)" unless otherwise stated) entered into by Metra, which are **not** funded by federal, state, or local (including RTA) grants.

For Professional Services funded by the capital funding, see PU-06-RC. If any Request for Proposals (RFP) is to be issued without competition, PU-02-RC should be followed.

II. POLICY

All contracts (or purchase orders) for Professional Services under this PU-07-RC are exempt from competitive bidding pursuant to MET Ordinance 94-18 and NIRC Ordinance 94-1, but they should be let by competitive negotiation, after public notice, unless otherwise approved by the Executive Director. In employing an exception to this general policy and the procedures stated herein, a memorandum for approval by the Executive Director must be submitted by the concerned Department Head explaining the reason(s) why a non-competitive procurement of Professional Services should be made. Contracts for Professional Services to be awarded without competitive negotiation must be authorized and executed by the Executive Director, subject to the approval of the Metra Board of Directors.

A RFP should furnish a clear and accurate description of the Professional Services to be procured. It should also indicate the criteria for the evaluation of the proposals. A relative weighted value of importance for each of the foregoing criteria to be used by the Evaluation Committee when reviewing proposals received with respect to the subject project. Metra will award contracts on the basis of the evaluation of the proposals from the standpoint of cost and other relevant factors deemed most advantageous to Metra.

Metra may choose to call the Offerors for discussions or negotiations, or award the contract without negotiations. If Metra opts for negotiations, Metra may restrict the field of choice to Offerors within a particular range. The range should be determined prior to solicitation by parameters such as qualifications, capability, and experience required to perform the Professional Services, the dollar value of the contract, and the ability to adhere to the time frame stipulated by Metra. If Metra chooses to exclude any Offeror falling within the range from negotiation, the reasons for such exclusion should be documented in detail by the concerned department head and approved by Professional Services/Contracts. If Metra wishes to reserve the right to award the contract without negotiation, it will be so stated in the RFP and properly justified.

II. POLICY (Continued)

Any proposal that does not fall within the prescribed range or does not demonstrate the experience, expertise, and other factors necessary to assure achievement of project objectives may be eliminated from further consideration.

An independent Cost Estimate must be submitted with the requisition in order to establish a base cost for budgetary purposes that is to incorporate and document an analysis as partial elements to rationalize the amount of the contract; foreseeable requirements, past and current usage, and possible procurement methods. Metra should obtain a detailed cost break-up on Metra Form RC4400 or approved cost sheet, and then perform a Cost Analysis of a proposal before entering into negotiations to determine the reasonableness of the price.

If it is necessary to process the contract as a sole source Professional Services Contract, then a memorandum justifying that determination must be approved by the Executive Director.

Metra will detail the significant history of the procurement and retain these records. These records will include, but are not limited to: (1) the rationale for the method of procurement, (2) the selection of a contract type, (3) the basis for the contractor selection or rejection, and (4) the basis for the contract price.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at Metra which are relevant to the project. Personnel directly connected with the project will be advised of its proprietary character and their responsibility to ensure it. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations. Offerors are not to be advised of their relative standing with other Offerors.

Contracts will be awarded normally on a maximum compensation basis. The contract will reflect a specified maximum amount, payment schedule, and method of payment. If Metra makes progress payments based upon percentage of work completed, Metra will assume title of the work based on the percentage paid by Metra. No payments should be made prior to the consultant's incurrence of costs.

Assignment of any portion of the work by subcontract is not authorized unless explicitly approved in advance by the Director, Professional Services/Contracts and Requisitioner/User Department. When a subcontractor is proposed to be utilized by the Offeror, the correct subcontractor data must be presented on Metra Form RC4400 or an approved cost sheet.

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating contracts for A & E services by Metra, regardless of the funding mechanism.

II. POLICY:

GENERAL:

A & E services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. The Brooks procurement method is based on the award of contracts for services such as A & E services using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, each Offeror's qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria. Negotiate the offer/contract with the highest ranked Offeror. In the event Professional Services/ Contracts Division is unable to reach an agreement with such Offeror, terminate negotiations with such Offeror and enter into negotiations with the next highest ranking Offeror (and so on).

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of an Architectural & Engineering (A & E) services contract will be described in the respective Request for Proposals ("RFP") prepared by the Requisitioner/User. Services which are not A & E services according to the Brooks Act, even though performed by an A & E firm, shall be considered professional services. (See PU-06-RC or PU-07-RC).

Each RFP will be submitted by the Requisitioner/User to the Professional Services/ Contracts Division, together with a list of the specific Evaluation Criteria for the subject project, a statement of work that is clear and an accurate description of the technical requirements for the service(s) to be procured, and an independent Cost Estimate prepared by the Requisitioner/User to establish a base cost for budgetary purposes that is to incorporate and document an analysis as partial elements to rationalize the amount of the contract; foreseeable requirements, past and current usage, and possible procurement methods. The initial RFP prepared by the Requisitioner/User will be reviewed by the Professional Services/ Contracts Division who, after such review and in concert with the Requisitioner/User, will prepare the formal RFP. No dollar value of any project will be directly or indirectly solicited in the formal RFP. The formal RFP will be used by the Professional Services/ Contracts Division for the solicitation of proposals from Offerors.

Proposals with respect to a given RFP will be solicited through the use of advertisement in a newspaper of general circulation, e-mail notification to Offerors selected from Metra's vendor database, and posting on Metra's web site. The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, may coordinate the scheduling of a pre-proposal conference to clarify requirements and answer questions from potential Offerors. Attendance at such pre-proposal conference however, by potential Offeror(s) is not mandatory and absence at such a conference will not be used to treat an Offeror as non-responsive.

The evaluation of the proposals received with respect to a given RFP will be performed by the respective Evaluation Committee. Proposals with respect to an RFP will be first received by the Professional Services/ Contracts Division and first opened, in the presence of a witness, on the respective proposal due date. The Professional Services/ Contracts Division will perform an initial review and complete a Responsibility Determination Form with respect to each proposal. Any potential Offeror which does not demonstrate that they are a responsive Offeror necessary to assure achievement of the RFP objectives may be eliminated from further consideration. Proposals accepted by the Professional Services/ Contracts Division for consideration will be forwarded to the Evaluation Committee for review.

FORMAL SOLICITATION AND AWARD FOR CONSTRUCTION CONTRACTS

I. PURPOSE

This procedure provides instructions for the solicitation of bids for construction contracts where the estimated cost is $10,000.00 or more.

II. POLICY

Metra will have and use an up-to-date list of firms registered in Metra's vendor database to use in the solicitation of construction contracts.

This procedure will be used when the acquisition of construction contracts will equal or exceed $10,000.00, unless specifically exempted.

Any construction acquisitions under $10,000.00 may be made utilizing Informal Quotations and Award (PU-04-RC), or if less than $500, Direct Purchases, (PU-13-RC).

The bid solicitation process will contain procedures for including Disadvantaged Business Enterprises on bidders' lists for the project to be procured, where appropriate.

Whenever possible and practical, Metra will endeavor to secure three or more bids (quotations) in the open market. If less than two bids are obtained, the reasons should be documented. If the solicitation specified a vendor as a sole source, a written memorandum explaining the reasons for the restriction must be provided. The memorandum must be signed by the manager of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director, as appropriate, and the Executive Director.

A sole source must be the only available contractor that can provide the goods or services.

If capital funding is involved, FTA/IDOT approval of a sole source may be required.

Only bids received by the announced due date and time will be considered.

Solicitation for bids from contractors will be made by media advertisements for Invitation for Bids. (See Exhibit II in PU-04-RC, Informal Quotations and Awards)

For contracts that include capital funds, a price/cost analysis and a history of procurement must be prepared and maintained on file.

Construction contracts will be awarded to the lowest, responsive and responsible bidder.

III. DEFINITIONS

Requisition: See Glossary

Sole Source: See Glossary

IV. RESPONSIBILITIES

Requisitioner/User
Submits requisition(s) and provides adequate specifications for items desired in accordance with Requisitioning of Materials and Services, PU-02-RC. Prepares memorandum justifying sole source requirements, signed by the Director of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director, as appropriate, and the Executive Director. Assists Procurement Division or Professional Services/Contracts Division in providing specifications and clarifying specifications, as required. Reviews bidders to verify their ability to meet technical specifications. Prepares independent cost estimate as required that is to incorporate and document an analysis as partial elements to rationalize the amount of the contract; foreseeable requirements, past and current usage, and possible procurement methods.

Budget Authority
Verifies availability of funds in the appropriate budget account. Reviews signatures and completeness of forms. The Department Head, Director, Section Chief, or other similarly designated person signs approval in box #25 on requisition after checking budget. Maintains a record of all requisitions and purchases to ensure that budget limitations are not exceeded. Verifies proper Account/Distribution codes.

Professional Services/Contracts Division
Determines the method of obtaining quotations. Solicits quotations and selects the lowest responsive and responsible bidder. Where possible, solicits bids to secure a minimum of three qualified vendors. Receives, opens, reads aloud, and records all bids received. If capital funds are involved, makes the award with concurrence from General Development Department. For items that are sole source, prepares memorandum justifying sole source requirement to Materials Management Senior Director. The Professional Services/ Contracts Division will also perform a Cost Analysis of such bid before entering into a contract in order to measure the cost reasonableness of the subject bid. Ensures that justification memorandum is signed by the Senior Director, Materials Management, Deputy Executive Director, and the Executive Director. Prepares purchase order/contracts and obtains signatures. Distributes purchase order/contract copies. Advises the Risk Management Division of the purchase of real property, new equipment, construction activities, and other insurable items. Maintain all substantive records and correspondence with respect to each IFB. Such records include, but

CHECK LIST – IFB's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	IFB No. _____ Section A SOLICATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Purchase Requisition	
2.	Specifications	
3.	DBE Goals	
4.	Requirement Justification – Contract/PO Term Does Not Extend Past 5 Years	
5.	Independent Cost Estimate	
6.	Bidder's List	
7.	Justification of Procurement Method	
8.	Copy of IFB	
9.	Proof of Publication	
10.	IFB Attachments/ Modifications	
11.	Pre-bid Minutes & List of Attendees	
12.	Correspondence with Bidders	
13.	Protests Prior to Bid Opening	
14.	Interoffice Correspondence	
15.	Review for Responsiveness (On Bid Tabulation)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST – IFB's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	IFB No. _____ Section B AWARD DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Copy of Each Bid	
2.	Letters of Returned Late Bids or Bid Errors	
3.	Bid Analysis/Tabulation Sheet	
4.	Technical Evaluation/Award Recommendation	
5.	Affirmative Action Evaluation/DBE Goal Exhibit Schedules	
6.	Bidder Responsibility Determination	
7.	Price Analysis or Cost Analysis	
8.	Record of Negotiation for Single Bid (If Applicable)	
9.	Justification of Contract Type Blanket P.O./Sole Source, etc.	
10.	Notice of Award	
11.	Notice to Unsuccessful Bidders (Bond, Check Returns) (If Applicable)	
12.	Legal Review of Contract Documents (Copy of Routing Slip)	
13.	Contract Document (Drawings not Required)	
14.	Performance/Material Bonds, Insurance Certificates (If Applicable)	
15.	Notice to Proceed (If Applicable)	
16.	Purchase Order (If Applicable)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST - IFB's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	IFB No. _____ Section C CONTRACT ADMINISTRATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Post Award Conference (If Applicable)	
2.	Status Reports (If Applicable)	
3.	Change Notices/Modification/Change Orders	
4.	Site Visit Reports (If Applicable)	
5.	Progress Meeting Minutes (If Applicable)	
6.	Quality Assurance Records (If Applicable)	
7.	Termination/Stop Work Notices or Resolution Plan (If Applicable)	
8.	Notice of Claims (If Applicable)	
9.	Release of Claims/Bonds (If Applicable)	
10.	Assignments (If Applicable)	
11.	Audit Reports (If Applicable)	
12.	Punch List Discrepancies	
13.	Liquidated Damages (If Applicable)	
14.	Close Out Documents (If Applicable)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section A SOLICATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Purchase Requisition	
2.	Rationale for Method of Procurement:	
3.	Specifications/Statement of Work	
4.	Justification for Procurement	
5.	Term of Contract Does Not Exceed 5 Years.	
6.	Cost Estimate	
7.	Set Aside Decision/DBE Goal	
8.	Justification of Procurement Method	
9.	List of Prospective Proposers	
10.	Proof of Publication	
11.	Copy of RFP	
12.	Addenda	
13.	Pre-proposal Minutes & List of Attendees	
14.	Correspondence with Bidders	
15.	Interoffice Correspondence	
16.	Review of Responsiveness (On Bid Tabulation)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section B AWARD DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Copy of Each Proposal (In Storage)	
2.	Proposal Tabulation Sheet	
3.	Evaluation Team Certification Forms	
4.	Evaluation Sheet/Matrix	
5.	Determination of Competitive Range	
6.	Invitation of Oral Interviews/Presentations	
7.	Notice of Rejection	
8.	Minutes of Discussions	
9.	Correspondence with Proposers	
10.	Cost or Price Analysis	
11.	Justification for Contract Type	
12.	Negotiation Memorandum	
13.	Copy of Each Best and Final Offer (If Applicable)	
14.	Award Recommendation Memorandum	
15.	Board Consent	
16.	Legal Review of Contract Documents (Routing Slip)	
17.	Notice of Award	
18.	Notice to Unsuccessful Proposers	
19.	Procurement Summary	
20.	Bonds (If Applicable)	
21.	Certification of Insurance	
22.	Contract Document (Drawings not Required)	
23.	Notice to Proceed	
24.	Contract/Purchase Order	

Contract No.: _____

Contract Administrator: _____
Date: _____

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section C CONTRACT ADMINISTRATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Post Award Conference	
2.	Quality Assurance Records	
3.	Change Notices/Modification/Change Orders	
4.	Periodic Status Reports	
5.	Site Visit Reports	
6.	Termination/Stop Work Notices or Resolution Plan	
7.	Notice of Claims	
8.	Release of Claims/Bonds	
9.	Assignments	
10.	Notice of Final Payment	
11.	Audit Reports	
12.	Liquidated Damages	
12.	Close out Documentation	

Contract No.: _____

Contract Administrator: _____

Date: _____

From July 21, 2011, PSR Final Report

7. Independent Cost Estimates

Basic Requirement: Chapter VI, Section 6 of FTA C 4220.1F requires that: "... in connection with every procurement action ... grantees must make independent estimates before receiving bids or proposals." Establishing a cost estimate in advance of the offer using a method independent from the perspective of offerors ensures a clear basis for analysis of cost or price, and provides essential procurement and financial planning information. Independent cost estimates are made by qualified engineering and functional staff who have first-hand knowledge of the commodity or service being purchased. The cost estimate is developed based on product knowledge, experience, and market status, and is used in performing price and cost analysis.

Discussion: Of the fifty-five (55) procurements reviewed, ten (10) were found to be deficient in this area. While Metra does include an estimate on their requisition, this process was not consistently followed. In addition, back-up documentation for the estimates listed on the requisition was not evident in the procurement files and Metra's policies and procedures do not require independent cost estimates for the sealed bid method of procurement.

Best Practices: Best Practices for obtaining independent cost estimates include:

- Estimates are received from design firm or in-house technical personnel for construction work,
- Published price lists or past pricing with inflation factors are analyzed, and
- Independent third-party staff member (not impacted by final procurement) develops these estimates.
- Use of a standard form, such as the template that appears in Appendix D is recommended.

Corrective Actions: Adherence to the requirement for independent cost estimates must be monitored and enforced consistently. To achieve compliance, Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of training and evidence of independent audit confirming that procedures are being followed consistently.

Metra's Response: As part of Metra's Pre-Award Activity, and listed on Metra's Checklist is, "Receiving an independent Cost Estimate of Contract/Purchase Order Valuation." Metra uses this checklist as part of our contract file administration.

Going forward emphasis will be placed upon the appropriate staff to improve supplying adequate supporting documentation.

Reviewing Contractor's Response: The proposed corrective action and response to the deficiency is not adequate. Evidence of the required independent cost estimate was not present in many of the reviewed procurement files. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

ATTACHMENT A
(revised 4-1-09)
ENGINEERING DEPARTMENT TABLE OF CONTRACTS

We intend to award the following contracts under this MRFP for the Engineering Department. Note that Metra reserves the right to award more, fewer, or none of the estimated number of contracts listed below. In addition, the amounts stated for the contracts are estimates only and Metra reserves the right to award contracts in greater or lesser amounts. Place an X next to the projects you want your proposal to be evaluated for. A separate rating will be given to your proposal for each of the projects below that you want to be considered for. DO NOT indicate interest in project(s) that you are neither interested nor qualified for; this will only cause unnecessary work and delay to all parties involved.

BOOK NO. 1

1. **Three Mechanical / Electrical Blanket Engineering Services** ____

   Provide mechanical / electrical engineering and construction management services for various Metra projects. Possible projects intended for this contract are, one MED Fueling Facility Improvements, one MWD Western Avenue shop improvements, one RID 47th Street Yard car equipment crane and one BNSF 14th Street Shop sand tower improvements . 2 @ $400K, and 1 @ $350K – DBE Goal 25% (See Attachment A-1 for a complete description)

2. **Two Civil / Structural Blanket Design Engineering Services** ____

   Provide civil / structural engineering services for various Metra projects. Potential projects are two SWS bridges, one RID bridge, and civil/structural bridge inspection. 1 @ 500K and 1 @ $250K - DBE Goal 25% (See Attachment A-2 for a complete description)

3. **Three Blanket Station and Parking Lot Design** ____

   Provide design engineering services for the design of Metra stations and Parking lots. Projects will include the construction of new and/or the rehabilitation of existing facilities. Consulting Engineer should be familiar with Metra's requirements for these types of facilities as well as possess knowledge of site work as well as ADA accessibility. Two station designs and one parking lot design are anticipated. 1 @ $500K, 1 @ 300K and 1 @ $250K - DBE Goal 25%.

4. **One Project Administration Blanket** ____

One project administrative blanket is anticipated. Consultant must demonstrate experience and understanding of project administration, ADA compliance, sign program and environmental assessment process. 1 @ $300K – DBE Goal 25%

BOOK NO. 2

5. **Final Engineering Design of CREATE Project P-1** ____

Provide final engineering and design to raise the existing two-track (proposed three-track) Metra Rock Island District (RID) Line over the existing three-track (proposed six-track) Norfolk Southern(NS) Railway at 63rd Street. Metra Signal Design is also included in the scope of the project. **Contract Value to be negotiated.** (See Attachments A-3 and A-4 for a complete description.) DBE Goal 23%.

BOOK NO. 3

6. Four Signal Blanket Engineering Services ____

Provide signal engineering services for various signal projects. Possible projects are one MWD Pedestrian crossings and construction management at CCF, one construction management at MWD A-5 Interlocker and miscellaneous signal design, one Positive Train Control development and one CREATE B-1/B-12 Interlocker design. 2 @ 750K, 1 @ $600K and 1 @ $500K - (See Attachment A-5 for a complete description.) DBE Goal 0%

We intend to award the above contracts under this MRFP for the Engineering Department. Note that Metra reserves the right to award more, fewer, or none of the estimated number of contracts listed above. In addition, the amounts stated for the contracts are estimates only and Metra reserves the right to award contracts in greater or lesser amounts. Place an X next to the projects you want your proposal to be evaluated for. A separate rating will be given to your proposal for each of the projects above that you want to be considered for. DO NOT indicate interest in project(s) that you are neither interested nor qualified for; this will only cause unnecessary work and delay to all parties involved.

SIGNAL PTC SUMMARY SHEET

	DISTRICT	MATERIAL	DESIGN		SHOP WIRING		INSTALLATION		TESTING		VERIFICATION		DISTRICT TOTAL DOLLARS	DISTRICT TOTAL MANHOURS
		DOLLARS	DOLLARS	MANHOURS	DOLLARS	HOURS	DOLLARS	MANHOURS	DOLLARS	MANHOURS	DOLLARS	MANHOURS		
1	MED - UNIVERSITY PARK	$ 4,033,445	$ 1,483,200	8,240	$ 1,302,912	18,096	$ 2,108,180	29,280	$293,376	3,056	$800,256	8,336	$ 10,021,349	67,008
2	MED - SOUTH CHICAGO	$ 306,610	$ 214,200	1,190	$ 293,760	4,080	$ 293,760	4,080	$52,224	544	$182,784	1,904	$ 1,343,238	11,798
3	MED - BLUE ISLAND	$ 150,750	$ 81,000	450	$ 155,520	2,160	$ 155,520	2,160	$27,648	288	$96,768	1,008	$ 667,206	6,066
4	RID - ROCK ISLAND	$ 2,020,300	$ 1,688,400	9,380	$ 315,648	4,384	$ 838,080	11,640	$219,648	2,288	$580,608	6,048	$ 5,682,684	33,740
5	RID - BEVERLY	$ 1,267,925	$ 763,200	4,240	$ 417,024	5,792	$ 768,960	10,680	$82,160	960	$107,520	1,120	$ 3,416,789	22,792
6	SOUTHWEST SERVICE	$ 658,430	$ 435,600	2,420	$ 51,840	720	$ 319,680	4,440	$102,912	1,072	$333,312	3,472	$ 1,901,774	12,124
7	MD - WEST	$ 1,266,540	$ 671,400	3,730	$ 342,144	4,752	$ 779,328	10,824	$210,432	2,192	$451,584	4,704	$ 3,741,428	26,202
8	MD - NORTH	$ 2,206,775	$ 1,197,000	6,650	$ 1,096,704	15,232	$ 1,494,720	20,760	$198,144	2,064	$397,824	4,144	$ 6,591,167	48,850
9	MD - FOX LAKE	$ 405,900	$ 282,600	1,570	$ 261,504	3,632	$ 293,760	4,080	$53,760	560	$161,280	1,680	$ 1,458,804	11,622
TOTAL													$ 34,804,439	240,102

METRA FIELD SUPERVISION (8% OF TOTAL)	$ 2,784,355	
CM FIELD SUPPORT (10% OF TOTAL)	$ 3,480,444	
VEHICLE/CONSTRUCTION EQUIP. (2% OF TOTAL)	$ 696,089	
METRA ENGINEERING (5% OF TOTAL)	$ 1,740,222	
CONTINGENCIES (20% TOTAL)	$ 6,960,888	

COLUMN TOTAL DOLLARS	$ 12,338,575	$ 6,816,600		$ 4,237,056		$ 7,051,968		$1,250,304		$3,111,936		$ 50,466,437	
COLUMN TOTAL MANHOURS			37,870		58,848		97,944		13,024		32,416		240,102

LTK - 03/17/10

Metra SM

Memorandum

DATE: October 20, 2009

TO: File

FROM: A. B. Darin, Department Head
Materials

SUBJECT: CONTRACT No. K91240 - Task No. 1
SIGNAL ENGINEERING SERVICES

Estimate of Cost:

Assume: Average hourly rate for all engineering disciplines of $60.00 per hour.
Average Overhead Burden Rate of 162.28%.

Direct Labor Costs	4335 hrs. x $60.00/hr.	$ 260,100.00
Overhead Burden	Direct Labor x 162.28%	$ 422,090.28
Fee 10%	(Direct Labor + Overhead Burden) x 10%	$ 68219.03
TOTAL ESTIMATED COST		$750,409.31

Metra is the registered service mark for the Northeast Illinois Regional Commuter Railroad Corporation.

II. POLICY (Continued)

An independent Cost Estimate will be submitted with the requisition before soliciting proposals in order to establish a base cost for budgetary purposes. Metra will also perform a Cost Analysis of the offer accepted by Metra before entering into a contract with an Architectual & Engineering firm in order to measure the cost reasonableness of a proposal.

Metra will detail the significant history of the procurement and retain these records. Such records include, but are not limited to, the documentation relating to the rationale for the method of procurement, the selection of contract type, the basis of contractor selection or rejection using a criteria rating schedule for Offerors considered, and the basis for the contract price. Other supporting records are required to be kept in the contract file or with the evaluating department.

The Professional Services/Contracts Division, in consultation with the Requisitioner/User department, will follow FTA guidelines where appropriate and Metra Administrative Operating Procedures regarding the appropriate actions associated with protest and disputes. (See PU-11-RC).

Any discussions during the solicitation, selection, and negotiation process will be conducted by the Professional Services/Contracts Division with the Requisitioning/User department with, normally, no less than the three highest ranked Offerors determined pursuant to the criteria outlined in the RFP. Attendance at pre-proposal conference by potential Offeror(s) is not mandatory and absence at such a conference will not be used to treat a proposal as non-responsive. Except in the case of Blanket RFPs, cost details from the highest ranking Offeror will be obtained on a RC4400 form after the evaluation process. For Blanket RFPs, a schedule of positions with the range of hourly rates including overhead and burden and any other costs to be determined will be obtained on RC4400 form from the highest ranking Offeror after the evaluation process. Thereafter, Metra shall negotiate with the highest ranking Offeror to determine the compensation that is fair and reasonable, taking into account the scope, complexity, and professional nature of the services. If no contract can be concluded with the highest ranking Offeror, negotiations will be formally terminated with that Offeror and new negotiations will be undertaken with the second most highest ranking Offeror. There should be documentation of such negotiations in sufficient detail to enable an understanding of the basis of the final cost.

Based upon the completed evaluation, the award should be made to the responsible Offeror(s) whose proposal will be most advantageous to Metra.

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating contracts for A & E services by Metra, regardless of the funding mechanism.

II. POLICY:

GENERAL:

A & E services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. The Brooks procurement method is based on the award of contracts for services such as A & E services using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, each Offeror's qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria.

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of an Architectural & Engineering (A & E) services contract will be described in the respective Request for Proposals ("RFP") prepared by the

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, shall coordinate further discussions with the identified highest ranking Offerors, including the scheduling of a pre-award interview to clarify any final matters. The Professional Services/ Contracts Division shall also obtain such other information, other than cost information, necessary to evaluate the identified highest ranking Offerors and their respective proposals.

Upon obtaining the foregoing information, the Evaluation Committee shall re-evaluate the identified highest ranking Offerors, first individually by each member then collectively as a group, to determine the Offeror whose proposal will be most advantageous to Metra based on the Evaluation Criteria. The Professional Services/ Contracts Division shall continue to negotiate with such selected Offeror to determine the compensation that is fair and reasonable, taking into account the scope, complexity, and professional nature of the services. Except in the case of Blanket RFPs, cost details from such highest ranking Offeror will be obtained on a RC4400 form after the evaluation process. For Blanket RFPs, a schedule of positions with the range of hourly rates including overhead and burden and any other costs to be determined will be obtained on RC4400 form from the highest ranking Offeror after the evaluation process. The Professional Services/ Contracts Division shall complete the Price Analysis Documentation and forward such documentation, together with all other information received with respect to the subject Offeror to the Evaluation Committee. Metra will also perform a Cost Analysis of such Offeror's proposal before entering into a contract in order to measure the cost reasonableness of the subject proposal.

Contracts with respect to a given RFP will be generally awarded on a maximum compensation basis, and will reflect a specified maximum amount, payment schedule, and method of payment. Advance payments prior to the incurrence of costs by the Offeror are prohibited. If no contract can be concluded with the highest ranking Offeror, negotiations will be formally terminated with that Offeror and new negotiations will be undertaken with the second highest ranking Offeror (and so on). Upon completion of the foregoing negotiations, the Professional Services/ Contracts Division shall prepare, and have internally approved, a contract to be executed by the selected Offeror. No contract shall exceed five (5) years including options, if any.

The Professional Services/ Contracts Division will maintain all substantive records and correspondence with respect to each RFP. Such records include, but are not limited to, the documentation relating to the rationale for the method of procurement, the selection of contract type, the basis of Offeror selection/ rejection based on the Evaluation Criteria, Evaluation Committee rankings (individual and group) with respect to each Offeror and the basis for the contract price. All such information shall be maintained by the Professional

Services/ Contracts Division in the respective procurement file (other than large maps, drawing and plans which are to be kept in respective department file).

Once a contract has been executed, the Requisitioner/User and the Professional Services/ Contracts Division will continuously monitor Consultant's compliance with the provisions of the contract. In the event of non-compliance by a Consultant, the Professional Services/ Contracts Division will contact said Consultant and attempt to achieve rectification of the compliance deficiencies. If said Consultant is unresponsive, or such deficiencies are not remedied, the Professional Services/ Contracts Division will take remedial actions with respect to the subject contract, including without limitation termination of the contract, as necessary. The Professional Services/ Contracts Division, in consultation with the Requisitioner/User department, will follow FTA guidelines where appropriate and Metra Administrative Operating Procedures regarding the appropriate actions associated with protest and disputes. (See PU-11-RC).

Upon completion of a project, the Requisitioner/User shall complete a Contract Completion Form and forward the completed form to the Professional Services/ Contracts Division to be filed in the respective procurement file.

III. DEFINITIONS

Architectural & Engineering (A & E) Services: See Glossary.

Blue Folder: See Glossary.

Board Concurrence: See Exhibit IV.

Brooks Method: See Glossary.

Canvass: See Glossary.

Capital Funds/Capital Funding: See Glossary.

Checklist - RFP's: See Exhibit V.

Clarification: See Glossary.

Contact Person means the individual(s) with technical expertise and/or experience in the subject matter of the RFP, selected and designated by the Requisitioner/User, in cooperation with the Professional Services/ Contracts Division, to respond to the technical inquiries of Offerors.

BUY AMERICA

Pre-Award Review - Bus (Element #59) & Post-Award Review - Bus (Element #60):

Metra provided Region V staff with additional documentation concerning the Terry Ford/ Buy America issue. We have attached said documentation, but also ask that the Region provide guidance on whether the Terry Ford submission is satisfactory.

1) These were not ARRA - funded
The listed Purchase Orders have Buy America Certificates

VIN	PURCH.DATE/ DELIVERY DATE	PURCHASED FROM	PO	GRANT	BUY AMERICA CERT.? Y/N	When Bid Date	Contract Awarded
1FTSS34L29DA87916	8/21/2009	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FTSS34L49DA87917	8/28/2009	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FTLR1FE8APa06584	12/1/2009	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FTLR1FE4APA06582	12/1/2009	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES	3/26/09	6/19/09
1FTLR1FE6APA06583	12/21/2009	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FTLR1FE2APA06581	12/23/2009	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FTLR1FEXAPA06585	12/28/2009	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDWF3FR1AEA19575	10/29/2009	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDWF3FRXAEA19574	10/29/2009	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDWF3FR6AEA30877	1/10/2010	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDWF3FR8AEA89994	1/10/2010	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDWF3FR3AEA39892	2/12/2010	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDWF3FR1AEA39891	3/11/2010	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDWF3FR4AEA30876	2/12/2010	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDWF3FR0AEA52597	3/31/2010	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDWF3FR6AEA89993	7/14/2010	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDXW4GR3AEA95503	7/14/2010	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDXW4GR6AEA55142	11/19/2010	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDXW4GRXAEA95501	2/28/2011	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDAW5GR6AEA95510	12/27/2010	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDWF3FR9AEA52596	6/24/2010	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		
1FDXW4GR3AEA95503	10/26/2010	TERRY'S FORD LINCOLN MERCURY	K90078	EE-4283-5421-1004	YES		

The listed Purchase Orders have Buy America Certificates

1FTSS34L89DA89976	9/20/2009	JOE RIZZA FORD	K90128	DU-4161-5421-1004	YES	3/26/09	6/11/09
1FTSS34L19DA89981	9/20/2009	JOE RIZZA FORD	K90128	EE-4283-5421-1004	YES		
1FTSS34L39DA89982	10/19/2009	JOE RIZZA FORD	K90128	DU-4161-5421-1004	YES		
1FTSS34LX9DA89980	9/20/2009	JOE RIZZA FORD	K90128	EE-4283-5421-1004	YES		
1FTSS34LX9DA89977	10/20/2009	JOE RIZZA FORD	K90128	DU-4161-5421-1004	YES		
1FTSS34L39DA89979	9/20/2009	JOE RIZZA FORD	K90128	EE-4283-5421-1004	YES		
1FTSS34L19DA89978	10/20/2009	JOE RIZZA FORD	K90128	DU-4161-5421-1004	YES		
1FTSS34L99DA87914	12/29/2009	SUTTON FORD	K90086	EE-4283-5421-1004	YES	3/26/09	6/09/09
1FTSS34L09DA87915	12/29/2009	SUTTON FORD	K90086	EE-4283-5421-1004	YES		
1FTSS34L59DA87912	12/29/2009	SUTTON FORD	K90086	EE-4283-5421-1004	YES		
1FTSS34L79DA87913	12/29/2009	SUTTON FORD	K90086	EE-4283-5421-1004	YES		
1FTSS34L39DA87911	12/29/2009	SUTTON FORD	K90086	EE-4283-5421-1004	YES		
1FDSS3BL7ADA06816	11/19/2010	BILL WALSH FORD (OTTAWA FORD)	K90083	DU-4161-5421-1004	YES	3/26/09	6/11/09

K05158

1FDSS3BLOADA06818	11/19/2010	BILL WALSH FORD (OTTAWA FORD)	K90083	DU-4161-5421-1004	YES		
1FDSS3BL2ADA06819	11/19/2010	BILL WALSH FORD (OTTAWA FORD)	K90083	DU-4161-5421-1004	YES		
1FDSS3BL9ADA06817	11/19/2010	BILL WALSH FORD (OTTAWA FORD)	K90083	DU-4161-5421-1004	YES		
1FTWX3BR2AEA26185	10/20/2010	BILL WALSH FORD (OTTAWA FORD)	K90083	DU-4161-5421-1004	YES		
1FTWX3BR0AEA26184	11/12/2010	BILL WALSH FORD (OTTAWA FORD)	K90083	EE-4283-5421-1004	YES		
1FTWX3BR4AEA26186	11/12/2010	BILL WALSH FORD (OTTAWA FORD)	K90083	EE-4283-5421-1004	YES		
1FTLR4FE5BPA50058	4/12/2011	TERRY'S FORD LINCOLN MERCURY	K05158	EY-4465-5421-1004	YES		
1FTLR4FE3BPA50057	4/12/2011	TERRY'S FORD LINCOLN MERCURY	K05158	EY-4465-5421-1004	YES	10/7/10	2/8/1

K90078

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(l) and the applicable regulations in 49 CFR Part 661.5.

Date March 25 - 2009

Signature

Company Name Terry's Ford Lincoln-mercury of Pestone

Title Commercial fleet mgr.

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (l) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

K90083

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date March 25, 2009

Signature [illegible]

Company Name Ottawa Ford LM, Inc.

Title President

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

X90086

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(l) and the applicable regulations in 49 CFR Part 661.5.

Date 03-09-09

Signature

Company Name SUTTON FORD INC

Title President

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (l) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date

Signature

Company Name

Title

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

K90128

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(l) and the applicable regulations in 49 CFR Part 661.5.

Date February 16, 2009

Signature Dale J. McMillan

Company Name Joe Rizza Ford, Inc.

Title Treasurer/Secretary

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(l)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (l) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

K05158

EXHIBIT 1-K

NON ROLLING STOCK

BUY AMERICA CERTIFICATE

The Bidder hereby certifies that it will comply with the requirement of Section 165a of the Surface Transportation Assistance Act of 1982 as amended, and the regulations of 49 CFR 661.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date 10-6-10

Signature Linda Sorich

Company Name Terry's Ford Lincoln

Title Fleet Manager

OR

Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j) (1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323 (j)(2)(A), 5323 (j)(2)(B), or 5323 (j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Note: The U.S./Canadian Free Trade Agreement does not supersede the Buy American Requirement.

Bidders must sign that either they "will comply" or, "cannot comply" with the Buy America Certificate. If bidder signs both compliance and non-compliance to the Buy America Certificate bidder will be deemed non-responsive.

Metra
ne way to really fly

547 W Jackson Blvd Chicago Illinois 60661 (312) 322-6900 TTY#1-312-322-6774

Memorandum

DATE: March 21, 2012

TO: Procurement, Professional Services/Contracts and Materials Management Staff

FROM: Paul A. Kisielius, Senior Division Director
General Administration

SUBJECT: Procurement System Review Training

Attached is the current version of the FTA Circular 4220.1F. This is the FTA document that guides our third party contracting. You should have this document at your desk as a ready reference. Please bring this document to Friday's training session.

U.S. Department
of Transportation

Federal Transit Administration

CIRCULAR

FTA C 4220.1F

November 1, 2008
Rev. 1, April 14, 2009
Rev. 2, July 1, 2010
Rev. 3, February 15, 2011

Subject: THIRD PARTY CONTRACTING GUIDANCE

1. PURPOSE. This circular provides contracting guidance for recipients of Federal assistance awarded by the Federal Transit Administration (FTA) when using that Federal assistance to finance its procurements (third party contracts). This revision incorporates the new procurement provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), and includes the most current available guidance for the Federal public transportation program as of the date of publication.

2. CANCELLATION. This circular cancels FTA Circular 4220.1E, "Third Party Contracting Requirements," dated 06-19-03.

3. AUTHORITY. Federal Transit Laws, Title 49, United States Code, Chapter 53.

4. WAIVER. FTA reserves the right to waive any provision of this circular to the extent permitted by Federal law or regulation.

5. FEDERAL REGISTER NOTICE. In conjunction with publication of this circular, a *Federal Register* notice was published on September 30, 2008 (73 FR 56896), addressing comments received during the development of the circular.

6. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to update this circular due to changes in other revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this circular. FTA will post updates on our Web site: **http://www.fta.dot.gov/.** The Web site allows the public to register for notification when FTA issues *Federal Register* notices or new guidance; visit the Web site and click on "Sign-up for e-mail updates."

7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, telephone FTA's Administrative Services Help Desk, 202-366-4865. Individuals with hearing impairments may contact the Federal Relay Service, 1-800-877-8339 for assistance with the call.

James S. Simpson
Administrator

THIRD PARTY CONTRACTING GUIDANCE

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I. CHAPTER I

INTRODUCTION AND ROLE OF THE FEDERAL TRANSIT ADMINISTRATION

1. THE FEDERAL TRANSIT ADMINISTRATION (FTA). FTA is one of ten modal administrations within the U.S. Department of Transportation (DOT) and is headed by an Administrator who is appointed by the President of the United States. FTA administers its programs and carries out its other activities through its headquarters office in Washington, DC, ten regional offices, and five metropolitan offices that assist public transportation agencies in all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, American Samoa, and in federally recognized Indian tribal areas.

   Public transportation includes, but is not limited to, transportation by buses, subways, light rail, commuter rail, monorail, passenger ferry boats, trolleys, inclined railways, people movers, and vans. Public transportation may be either fixed-route or demand-response service. The Federal Government, through FTA, provides financial assistance to develop new public transportation systems and improve, maintain, and operate existing systems. FTA oversees thousands of federally assisted projects to hundreds of State and local public transportation providers, primarily through its ten regional offices. Each FTA recipient is responsible for managing its programs and projects in compliance with applicable Federal requirements, and FTA is responsible for ensuring that recipients comply with those requirements.

2. AUTHORIZING LEGISLATION. Most Federal transit laws are codified at 49 U.S.C. Chapter 53. Authorizing legislation is substantive legislation enacted by Congress that establishes or continues the legal operation of a Federal program or agency. Congress has amended FTA's authorizing legislation every four to six years. FTA's most recent authorizing legislation is the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, August 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act, 2008, Public Law 110-244, June 6, 2008. SAFETEA-LU authorizes FTA programs from Federal Fiscal Year 2006 through Federal Fiscal Year 2009. Revisions to this edition of the circular encompass the SAFETEA-LU changes to Federal transit law and changes required by other laws that have become effective since FTA last issued this circular in 2003.

3. HOW TO CONTACT FTA. FTA's regional and metropolitan offices are responsible for providing financial assistance to FTA recipients and overseeing the implementation of most FTA programs. Certain programs, however, are the responsibility of FTA headquarters. You should direct inquiries to either the regional or metropolitan office responsible for the geographic area in which you are located. *See*, Appendix B for contact information.

For further information, visit the FTA Web site: **http://www.fta.dot.gov** or contact FTA headquarters at the following address and phone number:

Federal Transit Administration
Office of Communication and Congressional Affairs
1200 New Jersey Avenue, SE
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. BACKGROUND. Because FTA awards a substantial amount of Federal assistance to support public transportation through its grants and cooperative agreements, Federal laws and regulations require FTA to ensure that its recipients use that Federal assistance prudently and in compliance with all applicable Federal requirements. While FTA's enabling legislation includes several provisions governing recipient procurements financed with FTA assistance (third party contracts), other government-wide Federal requirements seek to ensure fair and economical procurements when Federal assistance is expended.

5. DEFINITIONS. All definitions in 49 U.S.C. Section 5302 apply to this circular. The following additional definitions are provided:

   a. Approval, Authorization, Concurrence, Waiver means a deliberate written statement (transmitted in typewritten hard copy or in an electronic format or medium) of a Federal Government official authorized to permit the recipient to take or omit an action required by the Grant Agreement or Cooperative Agreement for the Project, Master Agreement, or this circular, which action may not be taken or omitted without that permission. Except to the extent that FTA determines otherwise in writing, that approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit other similar actions. An oral permission or interpretation has no legal force, authority, or effect.

   b. Best Value describes a competitive, negotiated procurement process in which the recipient reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price such that a recipient may acquire technical superiority even if it must pay a premium price. A "premium" is the difference between the price of the lowest priced proposal and the one that the recipient believes offers the best value. The term "best value" also means the expected outcome of an acquisition that, in the recipient's estimation, provides the greatest overall benefit in response to its material requirements. To achieve best value in the context of acquisitions for public transportation purposes, the evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. While FTA does not mandate any specific evaluation factors, the recipient must disclose those factors in its solicitation. Evaluation factors may include,

but are not limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. This definition is intended neither to limit nor to dictate qualitative measures a recipient may employ, except that those qualitative measures must support the purposes of the Federal public transportation program.

c. Cardinal Change means a major deviation from the original purpose of the work or the intended method of achievement, or 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.

d. Change Order means an order authorized by the recipient directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor.

e. Common Grant Rules, for purposes of this circular, means:

(1) DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR Part 18, which apply to Federal grants and cooperative agreements with governmental recipients of Federal assistance including Indian tribal governments, and

(2) DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 CFR Part 19, which apply to Federal grants and cooperative agreements with non-governmental recipients of Federal assistance.

f. Constructive Change means an act or omission by the recipient that, although not identified by a "change order," does in fact cause a change in the contract work.

g. Contract means a mutually binding legal relationshipobligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the recipient to an expenditure and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq*.

h. Cooperative Agreement means an instrument by which FTA awards Federal assistance to a specific recipient to support a particular project in which FTA takes an active role or retains substantial control, as described in 31 U.S.C. Section 6305.

i. Design-Bid-Build Project means a construction project under which a recipient commissions an architect or engineer to prepare drawings and specifications under a design services contract, and separately contracts for construction, by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project.

j. Design-Build Project, as defined in 49 U.S.C. Section 5325(d)(1), means (1) a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build a public transportation system, or an operable segment of such system, that conforms to specific performance criteria; and (2) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment. Apart from the definition at 49 U.S.C. Section 5325(d)(1), a "design-build project" also means a construction project under which a recipient enters into a contract with a seller, firm, or consortium of firms both to design and construct a public transportation facility that is the subject of the project.

k. Electronic Commerce (E-Commerce) consists of electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web internet technology, electronic bulletin boards, purchase cards, electronic funds transfer, electronic signatures, and electronic data interchange.

l. Force Account means the recipient's own labor forces and equipment, as discussed in this circular in the context of performing project work.

m. FTA means the Federal Transit Administration.

n. Full and Open Competition means that all responsible sources are permitted to compete.

o. Governmental Recipient means a recipient that must comply with the Common Grant Rule at 49 CFR Part 18. This includes a State or local government or a federally recognized Indian tribal government, as defined in this section of this Chapter.

p. Grant means the instrument by which FTA awards Federal assistance to a specific recipient to support a particular project in which FTA does not take an active role or retain substantial control, as described in 31 U.S.C. Section 6304.

q. Indian Tribal Government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community, including any Native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. Section 1602, certified by the Secretary of the Interior as eligible for the special programs and services provided by him or her through the Bureau of Indian Affairs.

r. Joint Procurement (sometimes informally referred to as "cooperative procurement") means a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. Unlike a State or local government purchasing schedule or contract, a joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later choose to participate in the benefits of that contract.

We recognize that some will use the term "cooperative procurement" informally to refer to arrangements we designate as "joint procurement." We also recognize that this may cause confusion with the very different arrangements for the U.S. General Services Administration's (GSA) "Cooperative Purchasing Program" and with similar State or local government purchasing programs that the State or local government might refer to as "cooperative."

s. Local Government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government. This term does not include a local public institution of higher education.

t. Master Agreement means the FTA document incorporated by reference and made part of FTA's standard grant agreements and cooperative agreements, that contains the standard terms and conditions governing the administration of a project supported with Federal assistance awarded by the FTA.

u. Modification means any written change to the terms of a contract.

v. Non-Governmental Recipient means a recipient that must comply with the Common Grant Rule at 49 CFR Part 19. This includes a public and private institution of higher education, a public or private hospital, and any other quasi-public or private non-profit organization such as, but not limited to, a community action agency, research institute, educational association, and health center. FTA reserves the right to apply the requirements of 49 CFR Part 19 to a commercial organization, a for-profit organization, a foreign or international organization (such as an agency of the United Nations), and an individual. The term does not include a government-owned contractor-operated facility or research center providing continued support for mission-oriented, large-scale programs that is government-owned or controlled, or is designated as a federally funded research and development center.

w. Project Labor Agreement (PLA) means an agreement between the contractor, subcontractors, and the union(s) representing workers. Under a PLA, the contractor, subcontractors, and union(s) working on a project agree on terms and conditions of employment for the project, establishing a framework for labor-management cooperation to advance the buyer's procurement interest in cost, efficiency, and quality.

x. Property, as used in this circular, includes real property consisting of land and buildings, structures, or appurtenances on land, equipment, supplies, other expendable property, intellectual property, and intangible property.

y. Public Transportation means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, sightseeing, or intercity bus transportation, or intercity passenger rail transportation provided by the entity described in 49 U.S.C. Chapter 243, AMTRAK, (or a successor to such entity).

z. Recipient means the public or private entity to which FTA awards Federal assistance through a grant, cooperative agreement, or other agreement. The recipient is the entire legal entity even if only a particular component of the entity is designated in the document through which FTA has awarded the Federal assistance. The term "recipient" includes "grantee," which is a "recipient" of Federal grant assistance. The term "recipient" also includes each member of a consortium, joint venture, team, or partnership awarded FTA assistance through a grant, cooperative agreement, or other agreement.

For the purposes of this circular, "recipient" also includes any subrecipient or subgrantee of the recipient. Furthermore, a recipient is responsible for assuring that each of its subrecipients complies with the applicable requirements and standards of this circular, and that each of its subrecipients is aware of the Federal statutory and regulatory requirements that apply to its actions as a subrecipient.

Neither a third party contractor nor a third party subcontractor is a "recipient" for purposes of this circular.

aa. Revenue Contract means a contract in which the recipient or subrecipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with a public transportation related activity, or creating business opportunities involving the use of FTA assisted property.

bb. State means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands, or any agency or instrumentality of a State exclusive of local governments. "State" does not include any public and Indian housing agency under the United States Housing Act.

cc. State or Local Government Purchasing Schedule or Purchasing Contract means an arrangement that a State or local government has established with multiple vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities and others it might include in its programs, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the GSA's Cooperative Purchasing Program available for Federal Government use. If, at a later date, the State or local government permits others to use its schedules, the State or local government might seek the agreement of the vendor to provide the listed property or services to others with access to the schedules. In the alternative the State or local government establishing the schedules might permit the vendor to determine whether or not it wishes to provide others the same contractual arrangement it affords the State or local government that has established the schedules.

We recognize that some will use the term "cooperative" in reference to these State and local programs, possibly because they are somewhat similar to GSA's "Cooperative Purchasing Program." These programs are distinct from "Joint Procurement" as defined this Chapter.

dd. Third Party Contract refers to a recipient's contract with a vendor or contractor, including procurement by purchase order or purchase by credit card, which is financed with Federal assistance awarded by FTA.

ee. Unsolicited Proposal means a proposal that is:

(1) Innovative and unique,

(2) Independently originated and developed by the offeror,

(3) Prepared without the recipient's supervision, endorsement, direction, or direct involvement,

(4) Sufficiently detailed that its benefits in support of the recipient's mission and responsibilities are apparent,

(5) Not an advance proposal for property or services that a recipient could acquire through competitive methods, and

(6) Not an offer responding to a recipient's previously published expression of need or request for proposals.

ff. Value Engineering means the systematic application of recognized techniques that identify the function of a product or service, establish a value for that function, and provide the necessary function reliably at the lowest overall cost. In all instances, the

required function should be achieved at the lowest possible life-cycle cost consistent with requirements for performance, maintainability, safety, security, and aesthetics.

6. FTA'S ROLE. Consistent with the Common Grant Rules' directions to Federal agencies not to substitute their judgment for that of their recipients, FTA does not substitute its judgment for that of its recipients by making third party contract decisions for its recipients. FTA's role in third party procurements complies with the principles of Executive Order No. 13132, "Federalism," August 4, 1999, 5 U.S.C. Section 601 note. The Executive Order directs Federal agencies to refrain from substituting their judgment for that of their State recipients unless the matter is primarily a Federal concern and, to the maximum extent feasible, to permit the States to establish their own standards rather than impose national standards.

   To ensure compliance with Federal procurement requirements applicable to FTA projects, FTA will continue to provide guidance and technical assistance to its recipients consistent with its Federal oversight responsibilities.

   a. Reliance on the Recipient's Self-Certification. FTA recognizes that most FTA recipients have experience with the third party contracting requirements of the Common Grant Rules. Therefore, FTA will rely primarily on the recipient's annual "self-certification" (usually submitted in the first quarter of each Federal fiscal year) that its procurement system complies with FTA requirements and that the recipient has the technical capacity to comply with Federal procurement requirements. FTA requests each recipient to "self-certify" its procurement system as part of its Annual Certifications and Assurances.

      To preclude unnecessary delay of recipient procurements, FTA generally does not conduct preaward reviews of third party contracts or contract specifications as envisioned in the Common Grant Rules, 49 CFR Section 18.36(g)(2) and 49 CFR Section 19.44(e). Instead, FTA relies heavily on the recipient's self-certification of its procurement system.

      FTA, however, will review compliance with this circular as part of its routine oversight responsibilities. If FTA becomes aware of circumstances that might invalidate a recipient's self-certification, FTA will investigate and recommend appropriate measures to correct the recipient's deficiencies.

   b. Third Party Contract Reviews. Although the Common Grant Rules authorize FTA to conduct preaward reviews, FTA relies on the validity of the recipient's self-certification rather than on preaward review of third party contracts as a whole (except for certain reviews of portions of rolling stock procurements). FTA will rely on periodic, post-award reviews to ensure that the recipient complies with Federal requirements and standards. Should a recipient fail to self-certify its procurement system, however, FTA reserves the right to conduct preaward reviews as provided by the Common Grant

Rules. Even if a recipient self-certifies its procurement system, the recipient still may request FTA's preaward review of specific procurements as part of FTA's technical assistance program. Conversely, if FTA seeks to review the record of a particular procurement, the recipient must make its procurement documents available for FTA's preaward or post-award review.

c. Procurement System Reviews. Under 49 U.S.C. Section 5307(i), a recipient may request the Secretary of Transportation to approve its procurement system, and FTA may approve that procurement system if it complies with Federal requirements. As required by 49 U.S.C. Section 5307(h), FTA must perform reviews and evaluations of the Urbanized Area Formula Program, including full reviews and evaluations of the performance of each recipient that implement Urbanized Area Formula projects, with specific reference to the recipient's compliance with statutory and administrative requirements.

   Accordingly, FTA will perform procurement system reviews as part of its on-going project oversight responsibilities and will perform procurement system reviews for Urbanized Area Formula Program recipients that self-certify their procurement systems. To assist the recipient in improving its procurement practices, FTA may recommend certain "best practices." In those situations, FTA will identify its recommendations as "advisory." For more information, see FTA's "Procurement Reviews," guidance at the FTA Web site: **http://www.fta.dot.gov/funding/oversight/grants_financing_100.html.**

d. Audits. FTA may perform, contract for, or instruct the recipient to obtain specific audits of particular third party contracts to determine whether payments were made in conformance with the terms of the contract, or for other purposes.

e. Training and Technical Assistance. FTA provides procurement training and technical assistance at both regional and national levels by offering various instructional courses, by conducting regional technical assistance conferences, and by providing assistance by a contractor as needed.

f. Master Agreement. From the inception of its electronic award system in Fiscal Year 1995, FTA has incorporated by reference and made part of each FTA grant and FTA cooperative agreement a Master Agreement that FTA issues annually. Along with the standard terms and conditions governing an FTA assisted project, the most recent FTA Master Agreement, typically issued at the beginning of each Federal fiscal year, contains references to substantially all FTA and other cross-cutting Federal laws and regulations that may apply to a federally assisted project. Several of these Federal requirements must be included in third party contracts to the lowest tier necessary, and others will have a direct or indirect effect on the recipient's third party contracts, and therefore should be included in those third party contracts.

g. "Best Practices Procurement Manual" (BPPM). FTA's "Best Practices Procurement Manual" (BPPM) provides suggested procedures, methods, and examples to advise a recipient how it might conduct its third party procurements in compliance with Federal laws and regulations and FTA Circular 4220.1F guidance. These procedures, methods, and examples are based on the Federal acquisition process, U.S. Comptroller General Decisions, and "Best Practices" of recipients of FTA assistance and others in the industry, and FTA encourages recipients to adopt them as needed. Although the BPPM can be a good resource for the recipient to use in conducting FTA assisted procurements, it is not the source of any FTA or Federal requirements and, as such, is not binding on FTA recipients although the underlying Federal laws and regulations from which the BPPM's advice and recommendations are derived will apply. As such, the text of the BPPM is not and should not be treated as an official description of any FTA or Federal requirement. Moreover, although FTA does revise and update the BPPM periodically, FTA cautions each recipient that relying solely on the BPPM may not ensure compliance with all applicable FTA and Federal requirements. You can obtain access to the BPPM at the FTA Web site: **http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html.**

h. Third Party Procurement Helpline. This Helpline at the FTA Web site provides another resource through which you may submit your third party contracting questions to FTA. To do so, access the FTA Web site: **http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6040.html**.

i. "Frequently Asked Questions." To review the Frequently Asked Questions pertaining to third party contracting, access the FTA Web site: **http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6039.html**.

j. FTA Offices. You may also contact your FTA regional or metropolitan office or FTA's Office of Administration for assistance. You can find a list of FTA's regional and metropolitan offices in Appendix B of this document.

II. CHAPTER II

APPLICABILITY

1. LEGAL EFFECT OF THE CIRCULAR. The Federal Transit Administration (FTA) has developed this circular to assist its recipients and their subrecipients in complying with the various Federal laws and regulations that affect their FTA assisted procurements. FTA considers this circular, in its entirety, to be a guidance document. While this guidance itself does not have the force and effect of Federal law or regulation, it does contain information about Federal laws and regulations for which compliance is mandatory when applicable.

   As guidance, this circular attempts to describe how a recipient or subrecipient of FTA assistance can comply with those Federal requirements. In some cases, this guidance describes the single method by which an FTA recipient or subrecipient can comply with a specific Federal legal or regulatory requirement. In other cases, Federal laws, regulations, and this guidance provide more flexibility. As guidance, this circular also expresses FTA's preferences about how the procurements it supports should be undertaken. FTA's Master Agreement reflects FTA and the recipient's agreement that FTA's third party contracting circular will apply to its third party contracts. As a guidance document, this circular does not waive any requirements of Federal statutes or regulations restated herein except as permitted by their terms.

   Because this circular is guidance, FTA is willing to consider methods of compliance with Federal laws and regulations other than those described therein. If a recipient identifies an alternative method for complying with an applicable Federal statute and regulation, it may contact FTA before employing that method to ensure that FTA agrees with the alternative proposed. While FTA's prior concurrence is not required, FTA reserves the right to decline to participate in the costs of third party procurements that fail to comply with Federal laws, regulations, or the terms of the recipient's underlying grant or cooperative agreement.

2. APPLICABILITY OF THE CIRCULAR. Unless FTA determines otherwise in writing, this guidance applies when the recipient uses FTA assistance to support its procurements.

   a. Participants in FTA Assisted Procurements. Whether and how the circular applies to a specific participant in an FTA assisted project depends on its relationship to the particular FTA assisted procurement:

      (1) Recipients of FTA Grants or Cooperative Agreements. The circular applies to each FTA recipient of Federal assistance, including each grantee and recipient of Federal assistance under a cooperative agreement or an "other agreement" (whether an individual entity or member of a consortium, joint venture, team, or

partnership) when it uses FTA assistance for third party contracts. The extent to which the provisions of this circular apply to a recipient depends on whether the recipient is a State or other than a State.

(a) States. When procuring property and services under a grant or cooperative agreement, a State may use the same procurement policies and procedures that it uses for acquisitions not financed with Federal assistance. At a minimum, the State must comply with the federally mandated requirements on contract term limitations for revenue vehicle purchases, competition, prohibitions against geographic preferences, procurement of architectural engineering (A&E) services, and awards to responsible contractors. The State must also ensure that each purchase order and contract financed with FTA assistance includes all provisions required by Federal statutes and their implementing regulations.

1 Governmental Subrecipients of the State. Each State and its governmental subrecipients may use State procurement procedures for their third party contracts. Only those provisions of this circular and the sections of the Common Grant Rule for governmental recipients, 49 CFR Part 18, applicable to the State will apply to procurements by the State's governmental subrecipients.

2 Private Non-Profit Subrecipients of the State. In contrast, the provisions of this circular and the Common Grant Rule for non-governmental recipients, 49 CFR Part 19, will apply to a private non-profit subrecipient of a State.

(b) Recipients and Subrecipients that are not States. This circular applies to third party contractors and subcontractors of all other FTA recipients and their subrecipients, including regional public transportation authorities, that are not a State. Even though a recipient or subrecipient is not a State, it may use its own procurement procedures, if those procedures conform to applicable Federal law and regulations, including the applicable Common Grant Rule.

(2) Subrecipients of FTA Assistance. This circular also applies to each subrecipient, including each subgrantee (a type of subrecipient), under an FTA grant or cooperative agreement) that enters into contracts with other parties financed with FTA assistance.

(3) Recipients of Both Federal Assistance Awarded by FTA and Funds Provided by Another Federal Agency. An FTA recipient that also uses funding provided by another Federal agency or agencies for a third party procurement also supported with FTA assistance must comply with the third party contracting requirements of both FTA and each additional Federal agency providing Federal assistance. If

compliance with all Federal requirements is impossible, the recipient should notify the FTA Chief Counsel for resolution. If an FTA recipient finances an acquisition with funding provided by another Federal agency but not with FTA assistance, this circular would not apply to that procurement.

(4) Recipients of "Other Agreement" Assistance. For "other agreements" authorized by 49 U.S.C. Section 5312(a) for research, development, demonstration, and deployment projects or by 49 U.S.C. Section 5312(b) for joint partnership projects for the deployment of public transportation innovation, this circular may be used as an initial starting point from which to consider the Federal requirements and other provisions that should be adopted for the project, and the other standard Federal requirements that should be modified or waived to achieve FTA's and the recipient's objectives.

(5) Third Party Contractors and Subcontractors.

(a) Status. Neither third party contractors nor third party subcontractors are "recipients" or "subrecipients" for purposes of this circular. Consequently, third party contractors are not directly covered by this circular, the Common Grant Rules at 49 CFR Parts 18 and 19, or FTA's "Best Practices Procurement Manual" (BPPM) in awarding their subcontracts.

(b) Effect of Federal Requirements. However, each third party contractor and subcontractor is required to comply with the terms of its third party contract or subcontract, including requirements to extend those federally required clauses and provisions to its subcontractors at the lowest tier required. For that reason, this circular, the Common Grant Rules at 49 CFR Parts 18 and 19, and the BPPM do provide useful information to a third party contractor and third party subcontractor about the constraints under which a recipient may enter into a third party contract financed with FTA assistance.

b. Project Types and Third Party Contracts. With limited exceptions, FTA's Master Agreement reflects FTA and the recipient's agreement that FTA's third party contracting circular will apply to its third party contracts. The extent to which this circular applies to a recipient's contract depends on the character of that contract and the project which it supports.

(1) Capital Contracts. The provisions of this circular apply to most third party capital contracts except as listed below:

(a) Capital Contracts Financed Entirely Without Federal Assistance. Generally, the provisions of this circular do not apply to a recipient's capital contracts that are unrelated to an FTA assisted capital project and can be demonstrated to be entirely financed without FTA assistance or other Federal funds.

(b) Art. Procurements of art works and the services of artists are now included in this circular at Chapter IV, Subsection 4.g. These procedures are consistent with the procurement procedures of FTA Circular 9400.1A, "Federal Transit Administration Design and Art in Transit Projects," dated 06-09-95. FTA's "Best Practices Procurement Manual" still includes extensive non-binding suggestions and advice on procuring art works and the services of artists. FTA also has a Web site dedicated to art issues at **http://www.fta.dot.gov/publications/reports/other_reports/about_FTA_10641.html.**

(c) Over-the-Road Bus Accessibility Program. Section 3038 of the Transportation Equity Act for the 21st Century 1998 (TEA-21), as amended by Section 3039 of SAFETEA-LU, 49 U.S.C. Section 5310 note, authorizes the Over-the-Road Bus Accessibility Program to provide Federal assistance to private for-profit companies for the incremental costs of wheelchair lift equipment and the necessary training to implement DOT's accessibility requirements for over-the-road buses. FTA has determined that the provisions of this circular and the Common Grant Rules do not apply to the acquisition of FTA assisted property or services under that program. As a result, FTA's annual notice of availability of funds for that program does not refer to Common Grant Rule procurement requirements or this circular. The provisions of this circular and the Common Grant Rule at 49 CFR Part 19, however, apply to any over-the-road buses and related equipment for them acquired under another FTA program.

(d) Real Property. Procurements of real property consisting of land and any existing buildings and structures on that land are generally beyond the scope of this circular. Real property acquisition is addressed in DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR Part 24, implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. Sections 4601 *et seq.*, which provide protections for owners and lessees of real property to be acquired as part of an FTA assisted project. More guidance is included in the most recent edition of FTA Circular 5010.1, providing "Grant Management" guidance

The third party contracting provisions of this circular, however, do apply to FTA assisted construction of buildings, structures, or appurtenances that were not on land to be used for the project when that land was acquired. The third party contracting provisions of this circular also apply to any alterations or repairs to buildings or structures existing on that land when that land was acquired or made available for the FTA assisted project.

(2) Operations Contracts. FTA has reviewed its policies with respect to operations procurements undertaken by FTA recipients and their subrecipients and has adopted the following policies:

(a) Operations Contracts Financed With FTA Assistance. The provisions of this circular continue to apply to contracts in support of a recipient's or subrecipient's operations financed with FTA assistance.

(b) Operations Contracts Financed Entirely Without FTA Assistance. FTA has determined that its third party contracting requirements will not apply to operations contracts that recipients and their subrecipients finance entirely without FTA assistance. Notwithstanding any other provision of this circular, however, a recipient that enters into third party contracts for operations or planning must comply with the requirements of DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26, applicable to those contracts, regardless of how or whether it intends to use its FTA assistance for contracts or other purposes. Specifically, a recipient required to have a Disadvantaged Business Enterprise (DBE) program may not structure its operations expenditures so that an unreasonable proportion of contracts that could be performed by DBEs are removed from its DBE program. Other Federal regulations issued by FTA, DOT, or other Federal agencies may also apply a third party contractor, either directly as a covered entity or when the third party contractor is expected to perform activities on behalf of another entity or the Federal Government.

(3) Preventive Maintenance Contracts. Third party contracts for preventive maintenance are eligible for FTA capital assistance. This circular applies to a recipient's preventive maintenance contracts financed with FTA assistance. If a recipient uses its FTA assistance to support specific preventive maintenance contracts that are separate and distinct from its other maintenance or operations contracts, and if, through its accounting procedures, a recipient can allocate and trace all its Federal assistance for capital preventive maintenance to those separate and distinct preventive maintenance contracts, this circular applies only to those specific FTA assisted contracts. If, however, the recipient applies its Federal capital assistance for preventive maintenance as a percentage of its total maintenance costs, and the recipient cannot allocate all of its Federal assistance for capital maintenance to specific preventive maintenance contracts that are separate and distinct from its other maintenance or operations contracts, this circular applies to all the recipient's preventive maintenance contracts, even if specific maintenance or operations contracts were financed wholly without FTA assistance.

(4) Revenue Contracts. A revenue contract is a contract in which the recipient or subrecipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. The recipient has broad latitude in determining the extent and type of competition appropriate for a particular revenue contract. Nevertheless, to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, the recipient should conduct its revenue contracting as follows:

(a) Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.

(b) Open Contract Opportunities. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

In the case of joint development, as explained below, FTA will work with the recipient to determine appropriate procedures, as necessary.

(5) Joint Development. Many public transportation agencies form partnerships with the private sector in order to promote real estate development in and around transit facilities, which is often referred to as "joint development." Although FTA joint development projects are primarily a means to provide private capital to transit projects, joint development projects combine aspects of federally assisted construction and revenue contracting. FTA has published joint development guidance, including third party contracting guidance in a "Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements under Federal Transit Law," 72 FR 5788, February 7, 2007. Section VI of the Joint Development guidance addresses FTA's third party contracting requirements.

(a) Construction Contracts. This circular applies to FTA assisted construction aspects of a joint development project.

(b) Revenue Contracts. FTA will work with the recipient on a case-by-case basis to craft approaches suitable for revenue contracts as defined in this circular. FTA's concern is that procedures used satisfy Federal statutory and regulatory

requirements for competition while preserving the benefits of joint development to the maximum possible extent.

(c) Other Contracts. If a contract between a recipient and a third party involving a joint development project is not a construction contract or a revenue contract as defined in this circular, then that contract is not covered by FTA's third party contracting provisions. For example, third party contracts to manage, operate, or maintain intercity bus or intercity rail terminals, or tenancy agreements with third party intercity bus or intercity rail operators are the types of operations contracts not covered by FTA's third party contracting provisions. Nevertheless, even in situations not covered by the third party contracting provisions, FTA generally favors full and open competition.

(6) Public-Private Partnerships. A Public-Private Partnership (PPP) is a formal contractual arrangement between a public recipient and one or more private partners establishing a mechanism for procuring property and services under which the private sector assumes some of the public sector's customary role in the planning, financing, design, construction, operation, and maintenance of a transportation facility compared to traditional procurement methods, many of which activities are generally controlled by the public sector partner. As part of FTA's interest in fostering PPPs, FTA is considering which procurement and other requirements may be modified to simplify project implementation, including procurement requirements that are redundant with private sector safeguards, incentives, and obligations. While a recipient that has not formed a PPP may use some of the contract delivery arrangements or project delivery systems listed below, FTA is considering the implications for PPPs that use the following types of contracting delivery arrangements or project delivery systems, including, but not limited to:

(a) Design-Build,

(b) Design-Build with a Warranty,

(c) Construction Manager at Risk,

(d) Design-Build-Operate-Maintain,

(e) Design-Build-Finance-Operate,

(f) Build-Operate-Transfer,

(g) Build-Own-Operate, and

(h) Full Delivery or Program Management.

For a description of these types of PPPs, see FTA "Notice of establishment of Public-Private Partnership Pilot Program; solicitation of applications," 72 FR 2583, esp. 2584, 2585-2591, January 19, 2007.

As a starting point, FTA expects the parties to the PPP to apply the requirements of this circular to FTA assisted projects they undertake. A PPP recipient seeking an exception from specific provisions of this circular should contact the FTA Project Manager. FTA will work with the recipient to craft processes as necessary to satisfy the statutory and regulatory requirements for competition when FTA assistance is used while preserving the benefits of the innovative contracting strategy proposed to the maximum possible extent.

(7) Transactions Involving Complex Financial Arrangements. If a public transportation project involves the services of an "arranger" or similar facilitator, and those services will be financed with Federal assistance or the proceeds from the use of property supported with FTA assistance, FTA expects the recipient to use competitive procedures to select the "arranger." If, however, a public transportation project involves the services of an "arranger" or similar facilitator whose services will not be financed with Federal assistance or the proceeds from the use of property acquired with FTA assistance, FTA encourages, but does not require, competition in the selection of that arranger.

FTA also encourages the recipient to impose whatever conflict of interest provisions in its contract with the arranger the recipient may believe desirable. After the arranger is selected and then develops a transaction involving FTA assisted assets, FTA requires competition to the extent permissible in view of the limitations of securities regulations.

(8) Force Account. FTA third party contracting guidance does not apply to a recipient's use of its own forces to perform project work.

3. FEDERAL LAWS AND REGULATIONS. Each recipient and subrecipient must comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at 49 U.S.C. Chapter 53, FTA regulations, and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements.

a. Common Grant Rules. The following government-wide regulations (frequently referred to as the "Common Grant Rules") contain the most comprehensive Federal requirements applicable to FTA's assistance programs:

(1) Governmental Recipients. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR Part 18, apply to governmental recipients (apart from institutions of higher education) and Indian tribes, and

(2) Non-Governmental Recipients. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 CFR Part 19, apply to private non-profit entities, institutions of higher education and, if FTA so determines, to private for-profit organizations.

b. Federal Acquisition Regulation. The Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, does not apply to federally assisted procurements, absent Federal laws or regulations to the contrary. In the case of FTA programs, FAR Part 31 cost principles apply to grants and cooperative agreements with private for-profit entities. Audits of A&E services listed in 49 U.S.C. Section 5325 must be carried out under FAR Part 31 cost principles. In other circumstances , in the absence of specific guidance for federally assisted projects, other FAR standards might prove useful if the recipient's circumstances are suitable for application of a specific FAR provision under consideration. One major exception concerns at this time concerns the "simplified acquisition threshold." In this matter, FTA is taking the position that the FAR clause 2.101 definition of "simplified acquisition threshold," which was increased from $100,000 to $150,000, does not apply to FTA's federally assisted programs absent specific guidance from the Office of Management and Budget (OMB) or DOT, which we have not received as of February 2011. Instead FTA is continuing to use the dollar standard of the underlying original statute, establishing the simplified acquisition threshold, 41 U.S.C. Section 403(11), referred to in the Common Grant Rule for governmental recipients. But when Federal regulations or guidance is issued, FTA will implement it appropriately.

c. Other Federal Requirements. In addition to the Common Grant Rules, each FTA recipient must comply with applicable Federal transit laws and implementing regulations not addressed in the Common Grant Rules, and with other Federal cross cutting statutes and regulations that affect what a recipient may acquire.

(1) Compilation in the Master Agreement. Citations to most Federal requirements are included in the latest edition of FTA's Master Agreement, typically issued at the beginning of each Federal fiscal year, which includes comprehensive information about Federal laws and regulations that may apply to an FTA assisted project. FTA strongly encourages participants in FTA assisted projects to review the Master Agreement when making its procurement decisions. *See*, Chapter I, subsection 6.f of this circular for additional information about the Master Agreement.

(2) Conflicting Federal Requirements. Requirements of the various Federal agencies that may be involved in the project will sometimes differ, with the result that FTA expects the recipient to comply with all those differences. If compliance with all

applicable Federal requirements is impossible, the recipient should notify the FTA Chief Counsel for resolution.

d. Waivers. Requests for waivers of Federal requirements should be addressed to the Federal Transit Administrator

4. STATE AND LOCAL LAWS AND REGULATIONS. The Common Grant Rules provide that recipients and subrecipients will use their own procurement procedures that comply with applicable State and local laws and regulations, and also comply with applicable Federal laws and regulations.

a. Inadequate State and Local Requirements. If State or local laws or regulations do not address a particular aspect of procurement adequately, Federal direct procurement principles may often (but not always) provide useful guidance.

b. Conflicts between Federal Requirements and State or Local Requirements. If Federal requirements conflict with State or local requirements, the recipient should provide written notification promptly to either the FTA Regional Counsel for the region in which the project takes place or the FTA Assistant Chief Counsel for General Law in the case of projects administered by FTA headquarters staff. FTA will then work with the recipient to make appropriate arrangements to proceed with the project. If unsuccessful, then FTA reserves the right to amend or terminate Federal assistance for the underlying Project.

III. CHAPTER III

THE RECIPIENT'S RESPONSIBILITIES

1. WRITTEN STANDARDS OF CONDUCT. The Common Grant Rules require each recipient to maintain written standards of conduct governing the performance of its employees that are engaged in or otherwise involved in the award or administration of third party contracts.

   a. Personal Conflicts of Interest. As provided in the Common Grant Rules and in the Federal Transit Administration (FTA) Master Agreement, no employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals 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 individuals previously listed has a financial or other interest in the firm selected for award.

   b. Gifts. The recipient's officers, employees, agents, or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts. The recipient may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

   c. Violations. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the recipient's officers, employees, agents, board members, or by contractors, subcontractors, or subrecipients or their agents.

2. SELF-CERTIFICATION. FTA expects each recipient to self-certify that its procurement system complies with Federal requirements for any FTA assisted third party contract the recipient undertakes and administers.

3. THIRD PARTY CONTRACTING CAPACITY. As part of an FTA recipient's obligation to maintain adequate technical capacity to carry out its project and comply with the Common Grant Rules, the recipient's third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements. The Common Grant Rules require the recipient to 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. Many FTA recipients assign contracting duties to technical, financial or management personnel. If the recipient lacks qualified personnel within its organization to undertake the various procurement tasks, such

as drafting specifications, evaluating contracts, or performing internal audits for the recipient, FTA expects the recipient to acquire the necessary services from sources outside the recipient's organization. When using outside sources, the recipient should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.

a. Written Procurement Procedures. The Common Grant Rule for non-governmental recipients requires the recipient to have written procurement procedures, and by implication, the Common Grant Rule for governmental recipients requires written procurement procedures as a condition of self-certification. The recipient's procurement procedures are expected to address:

(1) Solicitations. The following standards apply to solicitations:

(a) Clear Descriptions. A clear and accurate description of the technical requirements for the material, product, or service to be procured is required (discussed further in Chapter VI of this circular).

(b) Nonrestrictive Specifications. In competitive procurements, the description may not contain features that unduly restrict competition. Notably, FTA may not finance procurements that use exclusionary or discriminatory specifications (discussed further in Chapter VI of this circular).

(c) Quality Requirements. A description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, describe minimum essential characteristics and standards to which the property or services must conform if it is to satisfy the recipient's intended use (discussed further in Chapter VI of this circular).

(d) Preference for Performance Specifications. The Common Grant Rule for governmental recipients advises the recipient that "[d]etailed product specifications should be avoided if at all possible." The Common Grant Rule for non-governmental recipients advises the recipient to describe technical requirements in terms of "functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards" (discussed further in Chapter VI of this circular).

(e) Brand Name or Equal. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of the property or services sought. The specific features or salient characteristics of the named

brand which must be met by offerors of "an equal" proposal must be clearly stated (discussed further in Chapter VI of this circular).

The Common Grant Rule for non-governmental recipients further requires (and governmental recipients should have) written procurement procedures that address:

(2) Necessity. The recipient's need for the property or services (discussed further in Chapter VI of this circular).

(3) Lease versus Purchase. The use of lease or purchase alternatives to achieve an economical and practical procurement (discussed further in Chapter IV of this circular).

(4) Metric Usage. The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement (discussed further in Chapter IV of this circular).

(5) Environmental and Energy Efficiency Preferences. A preference, to the extent practicable and economically feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient (discussed further in Chapter IV of this circular).

The recipient's procurement procedures should also address the following matters:

(6) Procurement Methods. What procurement methods may be used (discussed further in Chapter VI of this circular).

(7) Legal Restrictions. Any Federal, State, or local restrictions on the recipient's acquisitions (discussed further in Chapter IV of this circular).

(8) Third Party Contract Provisions. The specific third party contract provisions required for each third party contract including requirements that each third party contractor extend those provisions to its subcontractors to the extent required (discussed further in Chapter IV of this circular).

(9) Sources. The availability and use of various sources of property and services (discussed further in Chapter V of this circular).

(10) Resolution of Third Party Contracting Issues. Procedures to resolve third party contracting issues (discussed further in Chapter VII of this circular).

b. Adequate Third Party Contract Provisions. The Common Grant Rules require that all third party contracts include provisions adequate to form a sound and complete agreement. Compliance with Federal laws and regulations will usually result in the

addition of many other contract provisions to ensure compliance with those laws and regulations. *See*, Chapter IV of this circular for requirements applicable to third party contractors and the property and services those third party contractors agree to provide.

c. Industry Contracts. The recipient should take special care when using an industry developed contract or contract that may be provided by a bidder or offeror. Not only may that contract lack the required Federal provisions, but its terms may also be unfavorable to the recipient. FTA does not intend to prohibit the use of industry forms, specifications, or contract terms when their use would benefit the recipient and would accommodate Federal requirements. Instead, FTA intends to remind the recipient to use industry developed forms, specifications, or contract terms cautiously.

d. Record Keeping. The Common Grant Rules require the recipient to prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. The Common Grant Rules require the recipient to maintain these records for three years after the recipient and subrecipients, if any, have made final payment and all other pending matters are closed. The recipient must also prepare, maintain, and distribute the following documents as necessary:

(1) Procurement History. The Common Grant Rules require the recipient to maintain and make available to FTA written records detailing the history of each procurement, as follows:

(a) Procurement Method. A governmental recipient must (and a non-governmental recipient should) 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, while a non-governmental recipient need only provide a justification for lack of competition when it does not obtain competitive bids or proposals for contracts exceeding the simplified acquisition threshold. *See*, Chapter II, Subsection 3.b for discussion of amount of simplified acquisition threshold;

(b) Contract Type. A governmental recipient must (and a non-governmental recipient should) state the reasons for selecting the contract type it used (fixed price, cost reimbursement, and so forth);

(c) Contractor Selection. A governmental recipient must state its reasons for contractor selection or rejection. FTA expects the recipient to include a justification for each noncompetitive award. For procurements exceeding the simplified acquisition threshold (formerly the small purchase threshold – *see*, Chapter II, Subsection 3.b.), a non-governmental recipient must state its reasons for contractor selection, but need not state its reasons for contractor

rejection. Each recipient should include a written responsibility determination for the successful contractor; and

(d) Cost or Price. Each recipient must evaluate and state its justification for the contract cost or price.

(e) Reasonable Documentation. The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records will vary greatly for different procurements. For example, a receipt or bill accompanying a $100 credit card purchase might contain all of the required information to support that procurement. Procurements that are more substantial may require extensive documentation.

(2) Access to Records. Apart from the more limited record access provisions of the Common Grant Rules, 49 U.S.C. Section 5325(g) provides FTA and DOT officials, the U.S. 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.

e. Special Notification Requirements for States. For many years, various Federal appropriations laws imposed notification requirements on all recipients of Federal assistance awards exceeding $500,000. Currently, notification requirements have been limited to States, but the $500,000 threshold has been removed. Therefore, each State must include provisions in all its requests for proposals, solicitations, Federal assistance applications, forms, notifications, press releases, or other publications involving FTA assistance, stating that FTA is or will be providing Federal assistance for the project, the amount of Federal assistance FTA has provided or expects to provide, and the Catalog of Federal Domestic Assistance (CFDA) Number of the program that authorizes the Federal assistance. FTA interprets the statute to require that subrecipients, lessees, or third party contractors of the State at any tier also comply with those notification requirements. Because appropriations laws expire annually and these provisions have not been enacted as permanent legislation or even appear consistently in the same appropriations acts, it is necessary to review the various Federal appropriations acts for the applicable fiscal year to determine the required level of notification. FTA's Master Agreement incorporates the notification requirements in effect when that Master Agreement is issued.

f. Use of Technology/Electronic Commerce. Along with other technology the recipient may choose to employ, the recipient may use a well-structured Electronic Commerce system to conduct third party procurements.

(1) Sufficient System Capacity. The recipient's electronic system must have sufficient system capacity necessary to accommodate all Federal requirements, including applicable accessibility requirements, for full and open competition.

(2) Written Procedures. The recipient must establish adequate written procedures before any solicitation takes place. Those procedures must be sufficient to ensure that all the information FTA requires for project administration is entered into the recipient's electronic system and can be made readily available to FTA as needed.

(3) Uses. The recipient may undertake third party procurements through:

(a) Standard Bidding and Proposal Procedures. Standard procurement procedures may be implemented through an electronic medium or resource to the extent of the system's capacity.

(b) Electronic Bidding and Reverse Auctions. FTA recipients may use electronic bidding and reverse auctions.

1 Value. Procurements with a value of $100,000 or less may be conducted through electronic bidding or reverse auctions. If permitted under State or local law, procurements with a greater value may also be conducted through electronic bidding or reverse auctions. The recipient may acquire the services of a contractor to manage electronic bidding and conduct reverse auctions.

2 Procedures. Although neither FTA nor the Office of Federal Procurement Policy have established a formal definition of "reverse auction" or formal procedures for reverse auctions for Federal Government or Federal assistance purposes, the U.S. Comptroller General has approved the following procedures for reverse auctions of less than $100,000:

a Notification. The buyer "will notify potential participants of an upcoming auction, specifying the time that the auction will start and close."

b Bid or Quote Submission. Those who choose to participate will submit bids or quotations to the online auction Web site.

c Information Displayed During the Auction. During the auction, the Web site will display the property to be inspected, the current lowest quotation, and the time remaining in the auction.

d Information Not Displayed During the Auction. The Web site will not display the names of vendors, any other identifying information, or the time at which quotations were submitted.

e Information Displayed at the End of the Auction. At the close of the auction, competing vendors will be able to view all submitted quotations, as well as the winning quotation, and a purchase order will be sent to the winning vendor.

f Information Provided at the End of the Auction. The buyer will provide the name of the winning vendor and its quotation to unsuccessful vendors, but not the identity of the unsuccessful vendors.

4. AUDIT. A third party contract audit can be an important tool for managing procurements. In addition to special audits FTA may initiate, the recipient may find it desirable to perform an audit of one or more specific third party contracts as part of its own management process. The firm performing the recipient's federally required single annual audit may also recommend the audit of a specific third party contract.

   a. The Recipient's Auditors. In some cases, the recipient has sufficient qualified personnel to perform the third party contract audits it needs. In the alternative, the recipient may engage a qualified independent accountant or accounting firm to perform its audit responsibilities.

   b. Independent Auditors. The recipient's personnel will not be able to perform certain audits required by the Federal Government, such as audits required by the Single Audit Act of 1984, as amended, 31 U.S.C. Sections 7501 *et seq.* and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" as revised. If the Federal Government requires additional audits, it may also be necessary for the recipient to engage independent auditors not performing other work for the recipient. See also Chapter IV, subparagraph 2.b(19)(a) of this circular.

   c. Federal Audit Agencies. The Federal Government maintains a continuing Federal audit capability at certain contractor locations. On occasion, these auditors may be used to audit an FTA recipient's third party contracts. In other circumstances, an audit by a Federal agency may best serve the interests of the Federal Government and the recipient. This can be true of audits to determine a contractor's provisional overhead (burden) and General & Administrative (G&A) rates that need to be verified by audit for specific contract periods. Federal audit services, however, might not be available when needed; then the recipient will need to obtain the services of an independent private auditing firm that can perform the audit soon after an audit is requested.

5. FRAUD. As a reminder, 49 U.S.C. Section 5323(l) extends the criminal fraud provisions of 18 U.S.C. Section 1001 to all certificates, submissions, or statements made in connection

with any program financed under the Federal transit program. In addition, the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Sections 3801 *et seq.*, and DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to any false or fraudulent statement or claim made under the Federal transit program.

IV. CHAPTER IV

THE RECIPIENT'S PROPERTY AND SERVICES NEEDS AND FEDERAL REQUIREMENTS AFFECTING THOSE NEEDS

1. DETERMINING THE RECIPIENT'S NEEDS. To support a third party contract with Federal assistance awarded by the Federal Transit Administration (FTA), the Common Grant Rules require the recipient to adopt adequate procedures for determining the type and amount of property and services it needs to acquire:

   a. Eligibility. The property and services to be acquired must be eligible under the Federal law authorizing the FTA assistance award and any regulations thereunder. For example, FTA prohibits the use of capital assistance for the recipient's operations expenses. If FTA assistance will be used to finance the cost of property or services, the property or services must be within the scope of the specific project from which that FTA assistance will be derived.

   b. Necessity. The Common Grant Rules require the recipient to establish procedures to avoid the purchase of unnecessary property and services (including duplicative items and quantities or options it does not intend to use or whose use is unlikely). In monitoring whether a recipient has complied with its procedures to determine what property or services are unnecessary, FTA bases its determinations on what would have been a recipient's reasonable expectations at the time the recipient entered into the contract.

      (1) Unnecessary Reserves. FTA expects the recipient to limit the acquisition of federally assisted property and services to the amount it needs to support its public transportation system. In particular, FTA seeks information about the recipient's fleet to ensure that the recipient does not acquire more vehicles than it needs for public transportation service in its service area. Further guidance on spare ratios is contained in the most recent versions of FTA Circular 5010.1 providing Grant Management guidance, FTA Circular 9030.1 providing Urbanized Area Formula Program guidance, and FTA Circular 9300.1 providing Capital Investment Program guidance.

      (2) Acquisition for Assignment Purposes. The recipient 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. 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 small procurements.

(a) General Prohibition. The recipient 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. FTA recognizes that the quantity of property or services a recipient reasonably believes it may need at the time of contract award may change. A recipient's later needs might decrease due to changed circumstances or honest mistakes. In those situations, the recipient 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. Two or more recipients may enter into a single procurement at the same time to obtain advantages unavailable for smaller procurements, as discussed more fully in Chapter V, section 3 of this circular.

2 State or Local Government Purchasing Schedules or Purchasing Contracts. A State or local government may enter into contracts that support its purchasing schedules or purchasing contracts established as discussed more fully in Chapter V, section 4 of this circular.

c. Procurement Size. The recipient should consider whether to consolidate or break out the procurement to obtain a more economical purchase.

(1) Joint Procurements. It may be economically advantageous for a recipient to enter into a joint procurement with others that have similar needs. The recipient responsible for undertaking the joint procurement may, upon contract award, assign to the other participants responsibilities for administering those parts of the contract affecting their property or services. Participation in a joint procurement, however, does not relieve any participating recipient from the requirements and responsibilities it would have if it were procuring the property or services itself, and does not relinquish responsibility for the actions of other participants merely because the primary administrative responsibility for a particular action resides in an entity other than in itself.

(2) Small Procurements. In other circumstances, breaking out procurements may provide greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms, and women's business enterprises to participate. As stated in paragraph 1.b(2) of this Chapter, the FTA expects the recipient to ensure that it contracts only for its current and reasonably expected needs. Absent efforts to foster greater opportunities for DBEs, small and minority firms, and women's

business enterprises, the recipient should not split a large procurement merely to gain the advantages of small purchase available for federally assisted procurements of $100,000 or less identified in 41 U.S.C. Section 403(11).

d. Options. The recipient's contracts may include options to ensure the future availability of property or services, so long as the recipient is able to justify those options as needed for its public transportation or project purposes. An option is a unilateral right in a contract by which, for a specified time, a recipient may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract. Chapter VI of this circular contains procedures for evaluating options.

e. Lease versus Purchase. To obtain the best value, the recipient should review lease versus purchase alternatives for acquiring property and, if necessary, should obtain an analysis to determine the more economical alternative. The recipient may use FTA capital assistance to finance the costs of leasing eligible property if leasing is more cost effective than full ownership. Before the recipient may lease an asset, FTA regulations, "Capital Leases," 49 CFR Part 639, Subpart C, require the recipient to make a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset. Costs used in the comparison must be reasonable, based on realistic current market conditions, and based on the expected useful service life of the asset.

f. Specifications. Typically, the recipient is responsible for preparing specifications that describe its needs while assuring that those specifications are not exclusionary, discriminatory, unreasonably restrictive, or otherwise violate Federal laws or regulations. In general, specifications should clearly describe the property or services to be procured and state how the bids or proposals will be evaluated. For additional guidance, see section 2 of this Chapter, and Chapter VI, section 3 of this circular.

2. FEDERAL REQUIREMENTS THAT MAY AFFECT A RECIPIENT'S ACQUISITIONS. Before a recipient may use FTA assistance to support the acquisition of property or services, it must comply with all applicable Federal laws and regulations, whether or not addressed in the Common Grant Rules. Some of those laws and regulations will affect the third party contractor providing the property or services, or even determine which entities may qualify as a third party contractor. Other laws and regulations will affect the nature of the property or services to be acquired or the terms under which the property or services must be acquired. A recipient may not use FTA assistance to support acquisitions that do not comply with all applicable Federal requirements.

FTA's Master Agreement contains a current, but not all-inclusive, description of statutory and regulatory requirements that may affect a recipient's procurement (such as Disadvantaged Business Enterprise (DBE) and Clean Air requirements). The Master Agreement states that applicable Federal requirements will apply to project participants to

the lowest tier necessary to ensure compliance with those requirements. A recipient will also need to include applicable Federal requirements in each subagreement, lease, third party contract, or other document as necessary. For specific guidance on cross-cutting requirements administered by other Federal agencies, FTA recommends that the recipient contact those agencies.

The recipient may also use the checklists in Appendix C of this circular as a reminder of Federal requirements, and the matrices in Appendix D of this circular for a list of clauses and provisions required by Federal laws and regulations. The recipient may also refer to the Model Clauses in FTA's "Best Practices Procurement Manual" but cautions the recipient also to check the latest edition of FTA's Master Agreement to determine which provisions have been added, changed, or rescinded.

Some of the more typical requirements and restrictions that will affect the use of FTA assistance to finance a recipient's third party contracts include:

a. Contractor Qualifications. The following Federal laws and regulations may affect contractor selection:

(1) "Responsibility" Requirements. In addition to the Common Grant Rules that require contract awards be made only to responsible contractors, Federal transit law at 49 U.S.C. Section 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, the recipient must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Moreover, SAFETEA-LU now requires a recipient entering into a fixed guideway project contract to consider the contractor's past performance, including information reported in FTA's required Contractor Performance Assessment Reports, 49 U.S.C. Section 5325(j)(2)(C).

(2) Debarment and Suspension. Debarment and suspension regulations and guidance include the following:

(a) DOT Debarment and Suspension Regulations. 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. *See*, 2 CFR Part 1200. Thus, the recipient must 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 Part 180.

(b) General Services Administration (GSA) Excluded Parties List System. Even though the recipient may collect a debarment and suspension certification from the prospective third party contractor, or include a clause in the third party contract requiring disclosure, FTA strongly recommends that the recipient check the Excluded Parties List System (EPLS) maintained by the GSA and available at the Web site it maintains: **http://www.epls.gov/** before awarding a third party contract.

(c) State Debarment and Suspension Lists. A recipient may also treat any prospective contractor or subcontractor listed on a centralized State government debarment and suspension list as nonresponsible and ineligible for contract award.

(3) Conflict of Interest. The Common Grant Rules require the recipient to be aware of conflict of interest issues a prospective contractor might have, including lack of impartiality, impaired objectivity, or unfair competitive advantage, as discussed more fully in Chapter VI, paragraph 2.a(4)(h).

(4) Lobbying Certification and Disclosure. If the third party contract will exceed $100,000, the recipient must obtain a lobbying certification before awarding the contract, 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, which implement the Byrd "Anti-Lobbying" Amendment, 31 U.S.C. Section 1352.

(5) Federal Civil Rights Laws and Regulations. Each FTA recipient has agreed that it and its third party contractors at each tier will comply with:

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

1 Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. Section 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53 prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

2 Prohibition Against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended by Executive Order No. 11375, October 13, 1967, that

prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

(b) Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. Sections 1681 *et seq*. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25 prohibit discrimination on the basis of sex.

(c) Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1974, as amended, 42 U.S.C. Sections 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 CFR 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. Sections 621 *et seq*., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625, also prohibit employment discrimination against individuals on the basis of age.

(d) Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq*., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private 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.

(6) Socio-Economic Development. Each FTA recipient must comply with applicable Federal laws and regulations that provide competitive opportunities for a contractor that qualifies as a disadvantaged business enterprise (DBE), minority owned firm, women's business enterprise, or small business.

(a) Disadvantaged Business Enterprises (DBES). Section 451 of the "Hiring Incentives to Restore Employment Act" (HIRE Act), Pub. L. 111-147, Title IV, § 451, March 18, 2010, 23 U.S.C. Section 101 note, extends the Federal statutory provisions of Section 1101(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended (SAFETEA-LU), to require FTA to make available at least 10 percent of its funding under that Act for contracts with small business

concerns owned and controlled by socially and economically disadvantaged people. Each FTA recipient assists FTA in meeting this national goal. To receive FTA assistance, each FTA recipient must comply with applicable requirements of DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26. If the recipient is required to have a DBE program, the third party contracts that the recipient has included in its DBE program determine whether the recipient meets the DBE threshold for goal setting, and the goal if the threshold is met.

(b) Small and Minority Firms and Women's Business Enterprises. The Common Grant Rules require each recipient and subrecipient to take steps to ensure that it uses small and minority firms and women's business enterprises (irrespective of whether they qualify as DBEs) to the fullest extent practicable. Notably, some potential contractors may have established their home office in a Historically Underutilized Business Zone (HUBZone). A HUBZone small business is determined, qualified, and certified by the Small Business Administration (SBA) and then added to the List of Qualified HUBZone Small Business Concerns at SBA's website at **http://www.sba.gov/hubzone.** Although the Common Grant Rule for governmental recipients includes labor surplus area firms in the category of firms authorized for special treatment, this circular does not include them because Section 7101(a) of the Federal Acquisition Streamlining Act of 1994, 15 U.S.C. Section 644 note, enacted after publication of the Common Grant Rule for governmental recipients removed nearly all labor surplus area preferences.

1 Notice. The Common Grant Rules require each recipient to make information about procurement opportunities available to potentially qualified firms. Each governmental recipient is directed to include these contractors on solicitation lists and request their participation when they are potential sources.

2 Contract Size. To foster greater participation of small and minority firms and women's business enterprises, the Common Grant Rule for governmental recipients directs the governmental recipient to divide its total contracting requirements into small tasks or quantities, when economically feasible. The Common Grant Rule for non-governmental recipients encourages the non-governmental recipient to contract with consortia when a contract is too large for one of these firms to handle individually.

3 Delivery Schedule. The Common Grant Rules require the recipient to specify delivery schedules that encourage their participation.

4 Small Business Administration and the Department of Commerce Minority Business Development Agency. The Common Grant Rules instruct the recipient to use the services and assistance of the Small Business Administration and the Department of Commerce's Minority Business Development Agency.

5 Subcontracting Opportunities. The Common Grant Rule for governmental recipients directs each governmental recipient to require its prime third party contractors to include the preceding provisions in FTA assisted subcontracts. The Common Grant Rule for non-governmental recipients directs each non-governmental recipient to consider whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises. In addition, DOT's "Disadvantaged Business Enterprise: Program Improvements" amendments to its DBE regulations, effective February 28, 2011, now state that recipients may use race-neutral (and gender-neutral) small business set-asides for prime contracts under a stated amount, although set-asides restricted to DBEs continue to be prohibited except in limited and extreme circumstances.

(7) Sensitive Security Information. Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

(8) Seat Belt Use. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

(9) Texting While Driving and Distracted Driving. Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009. FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies that to decrease crashes by distracted

drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

b. 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.

(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.

(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.

(3) Period of Performance. FTA expects the recipient to use sound business judgment and be judicious in establishing and extending a contract's period of performance.

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

(b) Federal Restrictions. Except for procurements of rolling stock and replacement part contracts, which are limited by law to five (5) years as discussed in subsection 2.e of this Chapter, the recipient's other third party contracts (such as property, services, leases, construction, revenue, and so forth) are not encumbered by Federal requirements restricting the maximum periods of performance. Nevertheless, the duration of the recipient's other contracts must be reasonable.

(c) Time Extensions. Consistent with the general tone of the circular, contract time extensions will be considered in light of whether they are permissible changes or impermissible cardinal changes. Once the recipient awards the third party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.

(4) Federal Cost Principles. The Common Grant 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. Separate cost principles apply to the following four categories of recipients:

(a) Governmental Entities. OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 CFR Part 225, applies to project costs incurred by a recipient that is a State, local, or Indian tribal government.

(b) Educational Institutions. OMB Guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 CFR Part 220, applies to project costs incurred by a recipient that is a public or private institution of higher education.

(c) Non-Profit Entities. OMB Guidance for Grants and Agreements "Cost Principles for Non-Profit Organizations (OMB Circular A-122)," 2 CFR Part 230, applies to project costs incurred by a recipient that is a private non-profit entity.

(d) For-Profit Entities. FAR at 48 CFR Chapter 1, Subpart 31.2, "Contracts with Commercial Organizations," applies to project costs incurred by a recipient that is a for-profit entity.

(5) Payment Provisions. The recipient may use its own funds to finance its contracts. However, if the recipient intends to use FTA assistance, expects to be reimbursed with FTA assistance, or dedicates its local share funds to support contract costs it has financed, then it must structure its payment provisions carefully.

(a) FTA Support for the Project. FTA must indicate its general interest in the project before a recipient may use FTA assistance to finance or reimburse project costs, or use local share funds for project costs. FTA expresses its general interest in the project when it has taken one of the following actions:

1 Award Made. FTA has awarded Federal assistance to the recipient through a grant or cooperative agreement for the underlying project,

2 Preaward Authority. FTA has provided preaward authority for the underlying project through a *Federal Register* notice, or

3 Letter of No Prejudice. FTA has issued a letter of no prejudice for the underlying project.

(b) Advance Payments. Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. However, if there is no automatic preaward authority for its project, then advance payments made with local share funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other preaward authority has been provided, or

before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply:

1 Use of FTA Assistance Prohibited. The recipient may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable.

2 Exceptions for Sound Business Reasons. Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence. A recipient that seeks to use FTA assistance to support advance payments should contact the regional office administering its project to obtain FTA concurrence.

a Adequate Security for Advance Payments. FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential pre-condition to FTA's concurrence in the use of FTA or local share funds.

b Customary Advance Payments. FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed $100,000.

In summary, if there are sound business reasons justifying the advance payment and adequate security for the payment, FTA will generally concur in a written request for an exception.

(c) Progress Payments. Progress payments are payments for contract work that has not been completed. The recipient may use FTA 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.

1 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. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient 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.

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

3 Percentage of Completion Method. The Common Grant Rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method.

(6) Protections Against Performance Difficulties. The Common Grant Rule for governmental recipients authorizes FTA to require each governmental recipient to include contract provisions that would reduce potential problems that might occur during contract performance. In addition to other clauses that may be approved by the Office of Federal Procurement Policy, FTA expects the governmental recipient to include provisions as described below:

(a) Changes. FTA expects a governmental recipient to include changes and changed conditions provisions or clauses in most contracts, except for routine supply contracts.

(b) Remedies. The Common Grant Rule for governmental recipients authorizes FTA to require remedies. Accordingly, FTA expectations are as follows:

1 Liquidated Damages. FTA has determined that a recipient may use liquidated damages if the recipient 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. The rate and measurement standards must be calculated to reasonably reflect the recipient's costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages is often 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 procurement file should 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 involved unless FTA permits otherwise. We also refer you to Chapter V, paragraph 5(a)(1) for a discussion of how liquidated damages can be used to encourage settlements.

2 Violation or Breach. Third party contracts exceeding $100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor.

3 Suspension of Work. FTA may require provisions pertaining to suspension of work.

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

The Common Grant Rule for non-governmental recipients requires administrative, contractual, or legal contract remedies in instances in which a contractor violates or breaches terms of a contract that exceeds the small purchase threshold, which FTA recognizes as the simplified acquisition threshold. *See*, Chapter II, Subsection 3.b. The Common Grant Rule for non-governmental recipients also requires termination clauses for non-governmental recipients when procurements exceed thesmall purchase threshold, which FTA recognizes as the simplified acquisition threshold. *See*, Chapter II, Subsection 3.b. FTA strongly encourages care in developing appropriate performance remedies in all third party contracts.

c. Socio-Economic Requirements for the Acquisition of Property and Services. The following Federal laws and regulations imposing socio-economic requirements may affect a specific procurement:

(1) Labor. The following Federal labor protection laws and regulations may affect the types of property and services that may be acquired with FTA assistance:

(a) Wage and Hour Requirements. The Common Grant Rules direct the recipient to include provisions in its third party contracts requiring the contractor to compute the wages of every mechanic and laborer based on a standard workweek of 40 hours. Work in excess of the standard workweek is permitted if the worker is compensated at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The Common Grant Rules require these provisions for compliance with Sections 102 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 3702, and Department of Labor (DOL)

regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5. Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. Section 3701(b)(3)(A)(iii), increased the wage and hour thresholds of $2,000 for construction work and $2,500 for nonconstruction work set forth in the Common Grant Rules to $100,000. A federally assisted contract must exceed $100,000 before these wage and hour requirements apply to that contract.

(b) Fair Labor Standards. The Fair Labor Standards Act, 29 U.S.C. Sections 201 *et seq.*, applies to employees performing work involving commerce.

(2) Civil Rights. The following Federal civil rights laws and regulations may affect the types of property and services that may be acquired with FTA assistance:

(a) Nondiscrimination in Federal Public Transportation Programs. Federal transit law at 49 U.S.C. Section 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53 prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

(b) Title VI of the Civil Rights Act. In determining the types of property or services to acquire, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000d *et seq.* and DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21. In addition, FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for FTA Recipients," 05-13-07, provides FTA guidance and instructions for implementing DOT's Title VI0020 regulations.

(c) Environmental Justice. Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. Section 4321 note, and DOT Order 5610.2, "Department of Transportation (DOT) Order To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 FR 18377, April 15, 1997, protect minority populations and low-income populations against disproportionately high and adverse effects of federally assisted programs. FTA Circular 4702.1, "Title VI and Title VI-Dependent

Guidelines for FTA Recipients," 05-13-07, also provides FTA guidance and instructions for implementing the DOT Order on Environmental Justice.

(d) Limited English Proficiency (LEP). Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. Section 2000d-1 note, and DOT, "Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons," December 14, 2005, clarifies the responsibilities of recipients of Federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for FTA Recipients," 05-13-07, also provides FTA guidance and instructions for implementing the DOT Policy Guidance.

(e) Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.

1 Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. Section 794, prohibits discrimination on the basis of disability by recipients of Federal financial assistance.

2 The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.

3 DOT Public Transportation Regulations implementing Section 504 and the ADA. These regulations include DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27, DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Joint Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Examples of requirements include, but are not limited to, the following:

a Design and Construction. Accessibility requirements for the design and construction of new transportation facilities;

b Accessibility and Usability. Requirements that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;

c Complementary Paratransit Service. Requirements that public entities providing fixed-route service, (including a private non-profit entity providing public transportation service on behalf of the State or designated recipient as a subrecipient providing fixed-route service), provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service;

d Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.

(f) Electronic Reports and Information. Reports and other information prepared in electronic format developed in connection with a third party contract that the recipient intends to provide to FTA, among others, whether as a contract end item or in compliance with contract administration provisions, must comply with the accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794d, and ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194.

(3) Environmental Protections. Federal laws and regulations require the recipient to comply with applicable environmental requirements and implement them as necessary through third party contracts.

(a) Environmental Mitigation. FTA expects the recipient to include adequate third party contract provisions to facilitate compliance with environmental mitigation measures it has agreed to implement.

(b) National Environmental Policy Act. Certain acquisitions and the timing of certain acquisitions can adversely affect the environmental review process for a project constituting a major Federal action, and may result in a violation of the National Environmental Policy Act (NEPA), 42 U.S.C. Sections 4321 through 4335, and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

1 Property. The recipient may not enter into binding arrangements for the acquisition of property that may or would affect environmental impact determinations with respect to the underlying project or otherwise interfere with any required environmental impact reviews until applicable environmental impact determinations have been made.

2 Services. Council on Environmental Quality regulations, "Other Requirements of NEPA," 40 CFR Part 1506, at Section 1506.5(c), require the recipient to obtain a disclosure statement from the contractor selected to prepare an environmental impact statement specifying that the contractor has no financial or other interest in the outcome of the project.

(c) Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites. DOT's enabling legislation has special requirements designed to protect publicly owned parks, recreation areas, wildlife and waterfowl refuges, and historic sites, at 49 U.S.C. Sections 303(b) and 303(c) (often referred to as "Section 4(f)"), that may affect the timing and methods of recipient procurements. The Federal Highway Administration (FHWA) and FTA have published implementing regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 CFR Parts 771 and 774, and 49 CFR Part 622.

(d) Clean Air. The Common Grant Rules specifically prohibit the use of facilities included in the Environmental Protection Agency (EPA) "List of Violating Facilities," in the performance of any third party contract at any tier exceeding $100,000. The contractor must also comply with all applicable standards, orders, or regulations issued under Section 306 of the Clean Air Act, as amended, 42 U.S.C. Section 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. Sections 7401 through 7671q.

(e) Clean Water. The Common Grant Rules specifically prohibit the use of facilities included in the EPA "List of Violating Facilities," in the performance of any third party contract at any tier exceeding $100,000. The contractor must also comply with all applicable standards, orders, or regulations issued under Section 508 of the Clean Water Act, as amended, 33 U.S.C. Section 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. Sections 1251 through 1377.

(f) Recycled Products. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6962, requires governmental recipients to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. EPA guidelines, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR Part 247, direct that third party contracts of $10,000 or more with governmental recipients specify a competitive preference for products containing recycled materials identified in those EPA guidelines. For information about EPA's recovered materials advisory notices, see EPA's Web site: **http://www.epa.gov/cpg/backgrnd.htm.**

(g) Other Federal Environmental Protection Requirements. Additional third party contract provisions may be needed for compliance with other Federal laws and regulations. FTA's Master Agreement includes environmental laws and regulations that may affect the acquisition of property or services with FTA assistance such as various provisions to protect wild and scenic rivers, manage coastal zones, protect wetlands, conserve endangered species, and protect fisheries, archeological sites, and Indian sacred sites.

(4) Energy Conservation. The Common Grant Rules require third party contract provisions as necessary for compliance with applicable energy efficiency standards and policies of State energy conservation plans issued under the Energy Policy and Conservation Act, as amended, 42 U.S.C. Sections 6321 *et seq*.

(5) Preference for U.S. Property—Buy America. FTA's "Buy America" law and regulations apply to projects that involve the purchase of more than $100,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in the FTA assisted project. If FTA funds are used for the project, Buy America requirements apply to all procurement contracts under the project irrespective of whether a recipient decides to fund a discrete part of the project without FTA funds. Only if an activity is outside the FTA project and is financed entirely without funds to which FTA's Buy America regulations would apply may the recipient disregard FTA's Buy America requirements. Property that the contractor acquires to fabricate a deliverable for the recipient, such as tools, machinery, and other equipment or facilities, is not subject to FTA's Buy America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, the recipient may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether the property acquired would comply with FTA's Buy America regulations. FTA's Buy America statute does not pre-empt State laws with stricter requirements on the use of foreign articles, materials, and supplies.

FTA cautions that its Buy America regulations that apply to FTA assisted third party procurements, published at 49 CFR Part 661, differ from Federal "Buy American Act" regulations that apply to direct Federal procurements, published in the FAR at 48 CFR Chapter 1, Subparts 25.1 and 25.2. FTA strongly recommends that the recipient review FTA's Buy America regulations before undertaking any FTA assisted procurement.

(6) Shipments of Property—U.S. Flag Requirements.

(a) Shipments by Ocean Vessel. The Common Grant Rules require third party contract provisions to ensure compliance with 46 U.S.C. Section 55303 and Maritime Administration regulations, "Cargo Preference-U.S. Flag Vessels," 46 CFR Part 381, implementing the codified Cargo Preference Act. With few exceptions, the regulations require that U.S. Flag vessels be used to transport at least 50 percent of any federally assisted property.

(b) Shipments by Air Carrier. Third party contracts involving shipments of federally assisted property by air carrier will require provisions to ensure compliance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended ("Fly America" Act), 49 U.S.C. Section 40118, and GSA regulations, "Use of United States Flag Air Carriers," 41 CFR Sections 301-10.131 through 301-10.143. The regulations require shipment by U.S. flag air carriers unless such carriers are not reasonably available within the standards of GSA's implementing regulations.

(7) Project Travel—Use of U.S. Flag Air Carriers. Third party contracts to acquire transportation by air carrier needed by people participating in a federally assisted project require provisions to ensure compliance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended ("Fly America" Act), 49 U.S.C. Section 40118, and GSA regulations, "Use of United States Flag Air Carriers," 41 CFR Sections 301-10.131 through 301-10.143. The regulations require transportation by U.S. flag air carriers unless U.S. flag air carriers are not reasonably available within the standards of the GSA's implementing regulations.

d. Technical Restrictions on the Acquisition of Property and Services. The following Federal laws and regulations imposing technical requirements may affect a specific procurement:

(1) Intelligent Transportation Systems. Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

(2) Metric Measurements. The Common Grant Rules require the recipient to accept property and services with dimensions expressed in metric measurements, to the extent practicable and feasible, in compliance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C.

Sections 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," July 25, 1991, 15 U.S.C. Section 205a note; and applicable Federal regulations.

(3) Use of $1 Coins. To comply with Section 104 of the Presidential $1 Coin Act of 2005, 31 U.S.C. Section 5312(p), FTA assisted property that requires the use of coins or currency in public transportation service or supporting service must be fully capable of accepting and dispensing $1 coins.

e. Rolling Stock—Special Requirements. The following Federal laws and regulations impose requirements that may affect rolling stock procurements:

(1) Accessibility. Rolling stock must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

(2) Transit Vehicle Manufacturer Compliance with DBE Requirements. Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 CFR Section 26.49 requires the TVM to submit a certification that it has complied with FTA's DBE requirements.

(3) Minimum Service Life. FTA requires each recipient to maintain satisfactory continuing control of FTA assisted property. For buses and certain other vehicles, FTA has established minimum service life policies that may affect the quantity of vehicles that the recipient may acquire. *See*, the most recent versions of FTA Circular 5010.1, "Grant Management Requirements," FTA Circular 9030.1, "Urbanized Area Formula Program: Grant Application Instructions," and FTA Circular 9300.1, "Capital Program: Grant Application Instructions," that addresses minimum service life for vehicles.

(4) Spare Ratios. While all FTA assistance for third party procurements must be limited to property and services the recipient will use in the near future, FTA is concerned that the recipient does not acquire an excessive number of spare vehicles not regularly used in public transportation service.

(5) Air Pollution and Fuel Economy. Each third party contract to acquire rolling stock must include provisions to ensure compliance with applicable Federal air pollution control and fuel economy regulations, such as EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86; and EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

(6) Preaward Review and Post Delivery Review. Each third party contract to acquire rolling stock must include provisions for compliance with applicable requirements of 49 U.S.C. Section 5323(m) and those provisions of FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, that do not conflict with 49 U.S.C. Section 5323(m).

(7) Bus Testing. Each third party contract to acquire a new bus model or a bus with significant alterations to an existing model must include provisions to assure compliance with applicable requirements of FTA regulations, "Bus Testing," 49 CFR Part 665.

(8) In-State Dealers. The recipient may not limit its third party bus procurements to its in-State dealers, 49 U.S.C. Section 5325(i). Although FTA respects State licensing requirements, FTA is prohibited by law from providing FTA assistance to support bus procurements that have the result of limiting competition to entities that have been able to obtain a State license.

(9) Basis for Contract Award. As permitted by 49 U.S.C. Section 5325(f), the recipient may award a third party contract for rolling stock based on initial capital costs, or based on performance, standardization, life cycle costs, and other factors, or by selection through a competitive procurement process.

(10) Five-Year Limitation. A recipient may enter into a multi-year contract to buy rolling stock, with an option not exceeding five (5) years to buy additional rolling stock or replacement parts, 49 U.S.C. Section 5325(e)(1). The recipient may not exercise that option later than five (5) years after the date of its original contract.

FTA interprets this five-year period as covering the recipient's "material requirements" for rolling stock and replacement needs from the first day when the contract becomes effective to its "material requirements" at the end of the fifth year. In the case of rolling stock, which frequently cannot be delivered expeditiously, FTA recognizes that a recipient's "material requirements" for rolling stock will necessarily precede its actual need to put that rolling stock to use in public transportation service. This means that the contract may not have options for more rolling stock and replacement parts than a recipient's material requirements for a five-year period. The five-year rule does not mean the recipient must obtain delivery, acceptance, or even fabrication in five years. Instead it means only that FTA limits a contract to purchasing no more than the recipient's material requirements for rolling stock or replacement parts for five years based on the effective date of the contract.

f. Public Transportation Services—Special Requirements. Although the Common Grant Rules refer to the following Federal requirements in the context of federally assisted procurements, these requirements will affect how a third party contractor implements

its contract to provide public transportation services financed with Federal assistance. Consequently, the recipient must include provisions in its third party contract ensuring compliance with the following requirements, or the recipient must obtain the third party contractor's agreement in another form, as a matter of contractor responsibility, to ensure compliance with the following:

(1) Protections for Public Transportation Employees. When the recipient acquires public transportation services from a third party contractor, the terms of the recipient's DOL certification of public transportation employee protective arrangements will apply to work under the contract provided by those employees covered by the certification. That certification is required by 49 U.S.C. Section 5333(b) (often referred to as "13(c)") and implementing DOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215. Consequently, the third party contractor must comply with the terms of that DOL certification.

The Fair Labor Standards Act, 29 U.S.C. Sections 201 *et seq.*, also applies to public transportation employees performing work involving commerce.

(2) Drug Use and Testing and Alcohol Misuse and Testing. A third party contractor providing services involving the performance of safety sensitive activities must comply with 49 U.S.C. Section 5331 and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

(3) Accessibility. A third party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 *et seq.*; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)" using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. The recipient should advise its third party contractors operating public transportation services to review the requirements for public entities in this context.

(4) Protection of Animals. A third party contractor providing services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. Sections 2131 *et seq.* and Department of Agriculture regulations, "Animal Welfare," 9 CFR Subchapter A, Parts 1, 2, 3, and 4.

(5) Charter Service Restrictions. A third party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support any charter service operations except as permitted by 49 U.S.C. Section 5323(d) and FTA regulations, "Charter Service," 49 CFR Part 604.

(6) School Bus Restrictions. A third party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support exclusive school bus operations except as permitted by 49 U.S.C. Sections 5323(f) or (g) and FTA regulations, "School Bus Operations," 49 CFR Part 605, to the extent consistent with 49 U.S.C. Sections 5323(f) or (g).

g. Art. FTA recommends the following principles be used in procuring art works or the services of artists:

(1) Choosing Art Works and Services of Artists. The appropriate selection process should vary among projects, depending upon the nature and scope of the project, characteristics of the site, resources of the community, and State and local laws and regulations. The recipient's procedures should consist of the following:

(a) Process. A justifiable process demonstrating appropriate use of public funds that gives serious consideration to a variety of artists available and capable of working on the project.

(b) Nondiscrimination. Artists, regardless of race, color, creed, national origin, sex, or age, are eligible for consideration.

(c) Community Participation. The community surrounding the future facility participates in the selection process. This could include all levels of participation, including supplying information, attending panel meetings, and being voting members of the panel. The extent and type of participation should be determined by the commissioning entity and be appropriate to both the project and the community.

(d) Selection. Selection of art works or artists, or both, recommended to the recipient is determined by a panel of art and design professionals that may include, but need not be limited to, art administrators, artists, curators, and architects, and may include members of the community.

(2) Criteria for Art in Federally Assisted Transit Projects. When artists are involved in the planning and design of transit projects and/or when individual works of art are commissioned, the following should be considered:

(a) Quality. Quality of the art or design,

(b) Effect. Impact on the public,

(c) Relationship. Connection to the site or the adjacent community, or both; art that relates, in form or substance, to the cultures, people, natural or built surroundings, or history of the area in which the project is located,

(d) Suitability. Appropriateness for the site, including safety and scale,

(e) Resilience. Durability of materials and fabrication,

(f) Indestructibility. Resistance to vandalism, and

(g) Preservation. Minimum maintenance.

(3) Compensation of Artists. Artists may be paid a fixed fee or an hourly wage with a cap, similar to other FTA standard fees or wages for procurement of design professional services, in addition to other federally approved costs that may be recognized under the contract.

(4) Prohibition. Artistic undertakings that promote specific private or corporate business interests are ineligible for FTA funding.

h. Architectural Engineering (A&E) and Related Services—Special Requirements. Federal laws and regulations impose the following requirements on A&E and related procurements:

(1) Qualifications-Based Requirements. For projects related to or leading to construction, an FTA recipient must use the qualifications-based procurement procedures of 40 U.S.C. Chapter 11 ("Brooks Act" procedures) when contracting for A&E services and other services described in 49 U.S.C. Section 5325(b), which include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services.

(2) Relation to Construction. The nature of the services to be performed and its relationship to construction, not the nature of the prospective contractor, determines whether qualifications-based procurement procedures may be used.

(a) Purpose of Services. FTA has long administered the requirement for using qualifications-based procurement procedures for selection of contractors that perform A&E services, generally associated with the construction, alteration, or repair of real property. FTA interprets 49 U.S.C. Section 5325(b) to authorize the use of qualifications-based procurement procedures only for those services that directly support or are directly connected or related to construction, alteration, or repair of real property. FTA's interpretation of 49 U.S.C. Section 5325(b) is consistent with typical Federal policies implementing the "Brooks Act," 40 U.S.C. Section 1102, which limits qualifications-based procurement procedures to research, planning, development, design, construction, alteration, or repair of real property. Thus if services, such as program management, feasibility studies, or mapping, are

not directly in support of, directly connected to, or directly related to, or lead to construction, alteration, or repair of real property, then the recipient may not use qualifications-based procurement procedures to select the contractor that will perform those services.

(b) Requirements in the Context of a Construction Project. A project involving construction (including an ITS project) does not always require the use of qualifications-based procurement procedures. Whether qualifications-based procurement procedures may be used depends on the actual services to be performed in connection with the construction project. For example:

1 End Products Used in Construction. The design or fabrication of message signs, signals, and movable barriers that will become off-the-shelf items or will be fabricated and delivered as final end products for installation in an FTA assisted construction project, including an (ITS) construction project, are not services for which qualifications-based procurement procedures may be used.

2 Services Related to Design of Construction Projects. In contrast, services of a program manager, project designer, construction manager, or engineer in which the contractor would select the finished products to be acquired for an FTA assisted construction project are services for which qualifications-based procurement procedures must be used.

3 Actual Construction. The actual construction or improvement to the real property to be used in an FTA assisted construction project, however, are not services for which qualifications-based procurement procedures may be used.

(c) Type of Contractor Not Determinative. The nature of the firm performing the services does not determine whether it will be selected through the use of qualifications-based procurement procedures. For example, if a well-known A&E firm offers to provide mapping services not related to construction, alteration, or repair of real property, the recipient may not use qualifications-based procurement procedures to evaluate that contractor's offer. In contrast, if a firm that does not generally provide A&E services offers to provide mapping services that are directly in support of, directly connected to, or directly related to or lead to construction, alteration, or repair of real property, the recipient must evaluate that offer using qualifications-based procurement procedures.

(3) Equivalent State Law. SAFETEA-LU also divided the former 49 U.S.C. Section 5325(b) by separating procurement requirements for FTA assisted A&E services from audit requirements for FTA assisted A&E services. As amended by

the SAFETEA-LU Technical Corrections Act, 49 U.S.C. Section 5325(b)(1) requires A&E services to be procured using either "Brooks Act" procedures or an equivalent qualifications-based requirement adopted by a State before August 10, 2005.

(4) Special Requirements for Indirect Cost Rates. In addition, SAFETEA-LU amended 49 U.S.C. Section 5325 to require the acceptance of FAR indirect cost rates for applicable one-year accounting periods if those rates are not currently in dispute. After the indirect cost rates are accepted as required, the recipient must use those indirect cost rates for contract estimates, negotiation, administration, reporting, and payments, with administrative or de facto ceiling limitations. *See*, 49 U.S.C. Section 5325(b)(2) and subparagraph 2.j(2)(c) of this Chapter.

i. Construction—Special Requirements. The following Federal laws and regulations impose requirements that may affect FTA assisted construction projects:

(1) Bonding. The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (*see*, Chapter II, Subsection 3.b)unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:

(a) Bid Guarantee. Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to 5 percent of its 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 to ensure that the bidder will honor its bid upon acceptance.

(b) Performance Bond. Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for 100 percent of the contract price. A "performance bond" is obtained to ensure completion of the obligations under the third party contract.

(c) Payment Bond. The Common Grant Rules generally require the third party contractor to obtain a standard payment bond for 100 percent of the contract price. A "payment bond" is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:

1 Less Than $1 Million. Fifty percent of the contract price if the contract price is not more than $1 million,

2 More Than $1 Million but Less Than $5 Million. Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million, or

3 More Than $5 Million. Two and one half million dollars if the contract price is more than $5 million.

(d) Acceptable Sureties. The Common Grant Rule 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), **http://fms.treas.gov/c570/c570.html**. FTA encourages each governmental recipient to require similarly acceptable sureties.

(e) Reduced Bonding. FTA recognizes that bonding costs can be expensive. FTA will accept a local bonding policy that conforms to the minimums described in this subparagraph 2.h(1) of this Chapter. FTA reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project should submit its policy and rationale to the Regional Administrator for the region administering the project.

(f) Excessive Bonding. Compliance with State and local bonding policies that are greater than FTA's bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor's bankruptcy or financial failure when the work is partially completed. Nevertheless, if the recipient's "excessive bonding" requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements. Consequently, if the recipient's bonding policies far exceed those described in this subsection, FTA reminds the recipient that it may find it useful to submit its policy and rationale to the Regional Administrator for the region administering the project.

(2) Seismic Safety. The recipient must include seismic safety provisions in its third party contracts for the construction of new buildings or additions to existing buildings as required by 42 U.S.C. Sections 7701 *et seq.*, and DOT regulations,

"Seismic Safety," 49 CFR Part 41 at Sections 41.117 and 41.120, implementing the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. Sections 7701 *et seq*.

(3) Value Engineering. The Common Grant Rule for governmental recipients encourages them to use value engineering provisions in contracts for construction projects, and cautions that value engineering can be a pre-requisite for some Federal assistance awards. FTA generally will not approve a New Starts grant application for final design funding or a full funding grant agreement until value engineering is complete. It is important to note that some contractual arrangements (for example, design-build contracts) may inherently include value engineering. When this is the case, FTA does not require separate value engineering proposals, contract changes, or other processes. From a procurement view, the concept of value engineering is more important than the form it takes.

(4) Equal Employment Opportunity. The Common Grant Rules require that third party construction contracts include provisions ensuring compliance with DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Chapter 60, which implement Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," October 13, 1967.

(5) Prevailing Wages. Under 49 U.S.C. Section 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Common Grant Rules require third party contracts for construction, alteration, or repair at any contract tier exceeding $2,000 to include provisions requiring compliance with the Davis-Bacon Act, 40 U.S.C. Sections 3141 *et seq*., and implementing DOL regulations "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction," 29 CFR Part 5. The Davis-Bacon Act requires that contractors pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires contractors to pay wages not less than once a week. The recipient must include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and must condition contract award upon the acceptance of that wage determination. These requirements are in addition to the separate Wage and Hour Requirements addressed in paragraph 2.c(1) of this Chapter IV.

(6) Anti-Kickback. Section 1 of the Copeland "Anti-Kickback" Act, at 18 U.S.C. Section 874, prohibits anyone from inducing, by any means, any person employed

on construction, prosecution, completion, or repair of a federally assisted building or work, to give up any part of his or her compensation to which he or she is otherwise entitled. Section 2 of that Act, at 40 U.S.C. Section 3145, as amended, and implementing DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 CFR Part 3, impose record keeping requirement on all third party contracts for construction, alteration, or repair exceeding $2,000. The Common Grant Rules also require provisions for compliance with the Copeland "Anti-Kickback" Act, as amended, and implementing DOL regulations.

(7) Construction Safety. The Common Grant Rules require provisions to ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous as prohibited by the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 3704, and its implementing DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926. Notably, Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. Section 3701(b)(3)(A)(iii), increased the threshold for construction safety protections to $100,000 from $2,000 as set forth in the Common Grant Rules, so that a federally assisted construction contract must exceed $100,000 before these construction safety requirements apply to that contract.

(8) Labor Neutrality. Executive Order No. 13502, "Use of Project Labor Agreements for Federal Construction Projects," February 6, 2009, rescinds Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001, 41 U.S.C. Section 251 note. Consequently, a recipient may now require the use of a project labor agreement (PLA) in its third party contract, and a third party contractor or subcontractor may continue to use a PLA should it choose to do so.

(9) Preference for U.S. Property—Buy America. For any FTA assisted project having third party construction contracts exceeding $100,000, FTA's Buy America law and regulations require the third party contractor to provide property produced or manufactured in the United States for use in the construction project that the recipient acquires, unless FTA has granted a waiver authorized by those regulations. If FTA funds are used for the project, Buy America requirements apply to all third party procurement contracts under the project irrespective of whether a recipient decides to fund a discrete part of the project without FTA funds. Only if an activity is outside the FTA project and is financed entirely without funds to which FTA's Buy America regulations would apply may the

recipient disregard FTA's Buy America requirements. FTA cautions that its Buy America regulations are complex and different from the Federal "Buy American Act" regulations in the Federal Acquisition Regulation(FAR) at 48 CFR Chapter 1, Subchapter D, Part 25, Subparts 25.1 and 25.2.

Property that the contractor acquires to perform its construction activities for the recipient, such as tools, machinery, and other equipment or facilities, is not covered by FTA's Buy America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, the recipient may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether that property would comply with FTA's Buy America regulations.

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

j. Research, Development, Demonstration, Deployment, and Special Studies—Special Requirements. Procurements of research-type services can involve circumstances that bring special Federal requirements into effect. Among these are:

(1) Patent Rights. Irrespective of the status of the recipient, subrecipient, or third party contractor (for example, a large business, small business, State government, State instrumentality, local government, Indian tribe, non-profit organization, institution of higher education, individual, and so forth) the Common Grant Rules require provisions consistent with Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms," 37 CFR Part 401 (implementing the Bayh-Dole Act, 35 U.S.C. Sections 200 *et seq.*), unless the Federal Government requires otherwise. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent to the invention, for Federal Government purposes.

(2) Rights in Data. In general, FTA does not seek greater rights in data or copyright than described in the Common Grant Rules when it provides FTA capital assistance to support acquisitions. But when FTA provides Federal assistance to support the costs of a research, development, demonstration, or a special studies project, FTA generally seeks sufficient rights in the data developed so that the resulting data can be made available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor. FTA's general purpose in providing Federal assistance for a research, development, demonstration, or special studies project is to increase transportation knowledge, rather than limit the benefits of the project to project participants. Therefore, unless FTA determines otherwise in writing, FTA expects the following conditions to apply to rights in data requirements for FTA assisted research, development, demonstration, or special studies projects.

(a) Publication Restrictions. Except for its own internal use, the FTA Master Agreement provides that neither the recipient nor the third party contractor may publish or reproduce subject data in whole or in part, or in any manner or form, without the advance written consent of the Federal Government, unless the Federal Government has released or approved the release of that data to the public. These restrictions do not apply to an institution of higher education.

(b) Distribution of Data. Except for contracts for adaptation of automatic data processing equipment or data provided in support of an FTA capital project, each recipient and third party contractor must agree that, in addition to the rights in data and copyrights that it must provide to FTA under the Common Grant Rules, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If, for any reason, the project is not completed, all data developed under the project is expected to be delivered as FTA may direct.

In certain circumstances, however, FTA may determine that it is in the public interest to take only those rights in data identified in the Common Grant Rules.

(3) Export Control. If data developed in the course of a third party contract is subject directly or indirectly to U.S. Export Control regulations, that data may not be exported to any countries or any foreign persons, without first obtaining the necessary Federal license or licenses and complying with any applicable Department of Commerce, Export Administration Regulations, 15 CFR Part 730.

(4) Protection of Human Subjects. A third party contractor providing services involving the use of human subjects must comply with the National Research Act

at 42 U.S.C. Sections 289 *et seq.*, and DOT regulations, "Protection of Human Subjects," 49 CFR Part 11.

(5) Protection of Animals. A third party contractor providing services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. Sections 2131 *et seq.*, and Department of Agriculture regulations, "Animal Welfare," 9 CFR Subchapter A, Parts 1, 2, 3, and 4.

k. Audit Services. In general, the procedures of this circular apply to the acquisition of audit services financed with FTA assistance. The following considerations, however, are especially important in procurements of audit services:

(1) Single Audit Act. Each recipient that spends $500,000 or more in Federal awards in a single year must obtain an audit as required by the Single Audit Act of 1984, as amended, 31 U.S.C. Sections 7501 *et seq.*, and must ensure compliance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," as revised.

(a) Organizational Conflicts of Interest. The auditor selected must be independent of the recipient.

(b) Eligibility of Costs. The recipient may charge the costs for audits required by the Single Audit Act to its project as direct or indirect costs as permitted by applicable Federal Cost Principles. A recipient that spends less than $500,000 in Federal awards in a single year is not required to obtain this audit. Nor may a recipient spending less than $500,000 in Federal awards in a single year finance the costs of such an audit with Federal assistance.

(2) Other Project Audits. Before procuring audit services for a specific contract or project, the recipient should be aware of the following:

(a) Organizational Conflicts of Interest. In general, the recipient must select an auditor that is independent of the third party contractor to be audited.

(b) Verification of Indirect Costs. Federal verification of a contractor's indirect cost rates, such as provisional overhead (burden) and General & Administrative (G&A) rates, may be required. To the extent possible, relevant information available through undisputed audits of the contractor by other recipients should be used.

(c) Duplication of Services. To prevent duplication and ensure the eligibility of particular audit services for Federal participation, a recipient seeking a third party contract audit should contact FTA before undertaking or contracting for the audit. This is particularly important in connection with the procurement of

A&E services, because 49 U.S.C. Section 5325(b)(2) requires that FAR Part 31 cost principles be used to audit A&E contracts. In addition, 49 U.S.C. Section 5325(b)(2) requires the recipient and its A&E contractors and subcontractors to accept indirect cost rates established under FAR cost principles if those rates are not under dispute. Thus, the recipient should not obtain duplicative audits because they are likely to produce disparate indirect cost rates and the costs of those audits may be ineligible for Federal assistance. Accordingly, FTA recommends that the recipient seek guidance from the cognizant Federal auditor or agency that approved the third party contractor's indirect cost rates before entering into contracts for audits.

(d) Obtaining Indirect Cost Rates. Recipients and third party contractors may obtain indirect cost rates based on FAR cost principles from the following sources:

1 Governmental Entities. Government entities may obtain indirect cost rates through negotiations with OMB. *See*, OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 CFR Part 225, App. E, "State and Local Indirect Cost Rate Proposals."

2 Indian Tribes. Indian tribes may obtain indirect cost rates with the Department of the Interior. *See*, OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 CFR Part 225, App. E, "State and Local Indirect Cost Rate Proposals."

3 Educational Institutions. Educational institutions may obtain facilities and administrative rates (indirect cost rates) from the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), usually depending on which of the two agencies (HHS or DOD) has provided more funds to the educational institution for the most recent three years. *See*, OMB Guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 CFR Part 220, App. A, "Principles for Determining Costs Applicable to Grants, Contracts, and Other Agreements With Educational Institutions."

4 Non-Profit Entities. Non-profit entities may obtain indirect cost rates from the Federal agency with the largest dollar value of awards with an organization, unless different arrangements are agreed to by the agencies concerned. *See*, OMB Guidance for Grants and Agreements, "Cost

Principles for Non-Profit Organizations (OMB Circular A-122)," 2 CFR Part 230, App. A, "General Principles."

5 Private For-Profit Entities. Private for-profit entities may obtain indirect cost rates from the Defense Contract Audit Agency. *See*, the DCAA Web site: **http://www.dcaa.mil**.

(e) Eligibility of Costs. Costs of third party contract audits and proposal evaluations are eligible for reimbursement by FTA as a direct or indirect charge as permitted by applicable Federal cost principles. FTA reserves the right to disallow payments for duplicative audit charges.

V. CHAPTER V

SOURCES

A recipient will often have several sources from which to acquire the property and services it needs as described below:

1. FORCE ACCOUNT. As used in this circular, "force account" means the recipient's own labor forces and equipment. 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 recipient'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. Although rarely exercised, FTA's grant or cooperative agreement secures FTA the right to determine the extent to which Federal assistance may be used to participate in force account costs. FTA's concern is to assure that the recipient will have adequate technical capacity to perform the work it undertakes reasonably economically and prudently. The third party contracting guidance of this circular does not apply to a recipient's use of its own forces to perform project work.

2. SHARED USE. The Common Grant Rule for governmental recipients encourages recipients and subrecipients to enter into agreements for shared use of property and services. FTA encourages non-governmental recipients to consider shared use if economical and feasible.

3. JOINT PROCUREMENTS. FTA uses the term "joint procurement" to mean a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. Unlike a State or local government purchasing schedule, a joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later want to participate in the benefits of that contract.

   a. Use Encouraged. The Common Grant Rules and FTA encourage recipients to procure goods and services jointly with other recipients to obtain better pricing through larger purchases. Joint procurements offer the advantage of being able to obtain goods and services that may match each participating recipient's requirements better than those likely to be available through an assignment of another recipient's contract rights. If economical and feasible, FTA also participates in the costs of joint procurements by non-governmental recipients.

   b. All FTA and Federal Requirements Apply. When obtaining goods or services in this manner, recipients participating in the joint procurement must ensure compliance with

all applicable FTA and Federal requirements and include all required clauses and certifications in the joint solicitation and contract documents.

4. STATE OR LOCAL GOVERNMENT PURCHASING SCHEDULES OR PURCHASING CONTRACTS. 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. If the State or local government wishes to permit others to use its schedules, the State or local government might seek the agreement of the vendor to provide the listed property or services to others with access to the schedules, or it may permit the vendor to determine whether or not it wishes to do so.

   a. Use Encouraged. The Common Grant Rule for governmental recipients encourages recipients and subrecipients to enter into State and local intergovernmental agreements for procurements of property or services. If so permitted by State or local authorities, a non-governmental recipient may also use State and local sources of property and services.

   b. All FTA and Federal Requirements Apply. When obtaining property or services in this manner, the recipient 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. One way of achieving compliance with FTA requirements is for all parties to agree to append the required Federal clauses in the purchase order or other document that effects the recipient's procurement. When buying from these schedules, the recipient should obtain Buy America certification before entering into the purchase order. If the product to be purchased is Buy America compliant, there is no problem. If the product is not Buy America compliant, the recipient will need to obtain a waiver from FTA before proceeding.

5. FEDERAL EXCESS AND SURPLUS PROPERTY. The Common Grant Rule for governmental recipients encourages recipients to use Federal excess and surplus property managed by GSA when feasible and economical rather than procuring new property. The GSA Federal Property Management Regulations, 41 CFR Parts 101-42 through 101-46, 101-48, and 101-49 govern the eligibility of recipients and subrecipients, as well as others, to acquire supplies and services through GSA's personal property utilization and disposal programs.

6. FEDERAL SUPPLY SCHEDULES. A recipient must be specifically authorized by Federal law before it may use a GSA Federal Supply Schedule.

a. Full Use of Federal Supply Schedules. Appendix B of GSA Order ADM 4800.2E, "Eligibility to Use GSA Sources of Supply and Services," explains that FTA recipients eligible for full use of GSA Schedules are limited by the Federal Property and Administrative Services Act of 1949, as amended, at 40 U.S.C. Section 502(a)(3) to the Washington Metropolitan Area Transit Authority and the District of Columbia Department of Mass Transportation. The Government of American Samoa, the Government of Guam, Virgin Islands Department of Public Works, and the Commonwealth of the Northern Marianas are similarly authorized access to GSA schedules by 48 U.S.C. Section 1469e.

b. Limited Use of Federal Supply Schedules. Federal laws authorize State and Local Governments (including institutions of higher education) to use Federal Supply Schedules to acquire information technology (IT) and to purchase products and services to facilitate recovery from a major disaster. In both circumstances, GSA defines the term "State and Local Government" broadly to include many FTA governmental recipients and others as follows:

> The States of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges, and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments.

GSA has determined that the term "State and Local Government" does not include "contractors, or grantees, of State or local governments." Nevertheless, under the GSA Cooperative Purchasing Program, State and local governmental entities (including institutions of higher education) receiving Federal assistance, either as an FTA recipient or subrecipient, are eligible users by virtue of conforming to the definition of State or local government entities; the source of funding for these entities is irrelevant.

(1) Information Technology. Section 211 of the E-Government Act of 2002, 40 U.S.C. Section 502(c)(1), authorizes "State and local governments," within limits established by law, to acquire IT of various types through GSA's Cooperative Purchasing Program, Federal Supply Schedule 70.

(2) Major Disaster or Emergency Recovery. Since February 1, 2007, Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, amended 40 U.S.C. Section 502(d), to authorize State and local government entities to use any GSA Federal Supply Schedule to acquire property and services in advance of a major disaster declared by the President of

the United States, as well as in the aftermath of an emergency event. The State or local government is then responsible for ensuring that the property or services acquired will be used for recovery. More information about major disaster and emergency recovery acquisition is available at GSA's Web site: **http://www.gsa.gov/Portal/gsa/ep/contentView.do?faq=yes&pageTypeId=8199&contentId=22410&contentType=GSA_OVERVIEW.**

(3) Local Preparedness Acquisition. Section 2 of the Local Preparedness Acquisition Act, Pub. L. 110-248, June 26, 2008, amended 40 U.S.C. Section 502(c) by adding paragraph (2) authorizing "State and local governments" within limits established by law, to acquire law enforcement, security and certain related items of various types through GSA's Cooperative Purchasing Program Federal Supply Schedule 84 or any amended or later version of that Federal supply classification group. Information about cooperative purchasing is available at GSA's Web site: **http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8199&channelPage=%252Fep%252Fchannel%252FgsaOverview.jsp&channelId=-13528.**

c. All FTA and Federal Requirements Apply. When using GSA schedules to acquire property or services in this manner, the recipient must ensure all Federal requirements, required clauses, and certifications (including FTA's Buy America requirements) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document. One way of achieving compliance with FTA requirements is for all parties to agree to append the required Federal clauses in the purchase order or other document that effects the recipient's procurement. When buying from these schedules, the recipient should obtain an FTA Buy America certification before entering into the purchase order. If the property to be purchased is Buy America compliant under FTA regulations, the recipient may proceed with its acquisition. If the property is not Buy America compliant under FTA standards, the recipient will need to obtain a waiver from FTA before proceeding.

d. Competition and Price Reasonableness. When using GSA schedules to acquire property or services, a recipient will have fulfilled the Common Grant Rules' competition requirements if it seeks offers from at least three sources. FTA expects a recipient using a price published on a GSA schedule to consider whether the GSA price is reasonable. The recipient may also seek a lower price than that published on the GSA schedules.

7. EXISTING CONTRACTS. Occasionally, a recipient may find it advantageous to use existing contract rights. As used in this circular, "existing contract" means a contract that, when formed, was intended to be limited to the original parties thereto, and does not include State or local government purchasing schedules or purchasing contracts as discussed in sections 4, 5, and 6 of this Chapter.

a. Permissible Actions. Within the conditions set forth below, FTA permits a recipient to use existing contract rights held by another recipient:

(1) Exercise of Options. A recipient may use contract options held by another recipient with the following limitations:

(a) Consistency with the Underlying Contract. FTA expects the recipient to 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.

(b) Price. The recipient may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.

(c) Awards Treated as Sole Source Procurements. The following actions constitute sole source awards:

1 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.

2 Negotiating a Lower Option Price. Exercising an option after the recipient 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, such as changes in Federal prevailing labor rates, for example.

In the circumstances described in this paragraph, FTA assistance may be used to support a sole source award only if that award can be justified under FTA's third party contract standards for sole source awards.

(2) Assignment of Contract Rights. FTA expects the recipient to limit its procurements to the amount of property and services required to meet its reasonably expected needs without adding excess capacity simply for the purpose of assigning contract rights to others at a later date. FTA expects the recipient to be able to justify the quantities it procures. Having written statements of its anticipated material requirements in the recipient's contract files may prove helpful.

For example, if the supplies or services were solicited, competed, and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, the

solicitation and also the contract award are expected to contain both a minimum and maximum quantity that represent the recipient's reasonably foreseeable needs. The establishment of State or local government purchasing schedules intended to be available for future use as discussed in section 4 of this Chapter, however, are not usually financed with FTA assistance. FTA assistance would be used to acquire property or services listed on such a contract only to the extent needed for public transportation purposes.

Nevertheless, a recipient may find that it has inadvertently acquired contract rights in excess of its needs. The recipient may assign those contract rights to other recipients 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. Some refer to this process as "piggybacking."

(a) Acquisition Through Assigned Contract Rights. Although FTA does not encourage the practice, a recipient may find it useful to acquire contract rights through assignment by another recipient. A recipient that obtains contractual rights through assignment may use them after first determining that the original contract price remains fair and reasonable, and the original contract provisions are adequate for compliance with all Federal requirements. The recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the recipient to determine whether the contract price or prices originally established are still fair and reasonable before using those rights. *See*, FTA's "Best Practices Procurement Manual" for further information about procurements through assignment of another's contract rights. The recipient using assigned contract rights is responsible for ensuring the contractor's compliance with FTA's Buy America requirements and execution of all the required Buy America preaward review and post delivery review certifications. For further details, please refer to FTA's Pre-Award and Post-Delivery Handbook for buses and railcars, which contain copies of those certifications. The recipient seeking to use assigned contract rights will not usually be able to determine whether the assigning recipient originally procured unreasonably large quantities. Before proceeding with the assignment, however, FTA does expect the recipient seeking the assignment to review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities the acquiring recipient seeks, do not exceed the amounts available under the assigning recipient's contract.

(b) Alternatives to Assigned Contract Rights. Assignments limit a recipient's choices to specific property and services acquired to meet another recipient's

particular needs, and may be less suited to the needs of the recipient seeking the assignment. More desirable approaches may include:

1 Joint Procurements. Recipients should consider combining or "pooling" their procurements to obtain better pricing. In general, joint procurements are often more desirable than procurements through assignment because an assignment does not represent the combined buying power of more than one purchaser at the time when prices are established. A joint procurement may also offer the advantage of permitting the parties to acquire property and services more closely responsive to each purchaser's material requirements than would be available through assignment of existing contract rights. FTA cautions, however, that if two or more parties jointly solicit and award an IDIQ contract, total minimum and maximum quantities are expected to be stated in the solicitation and contract.

2 Intergovernmental Procurements. As discussed in sections 4, 5, and 6 of this Chapter, Federal, State, and local governmental resources may provide attractive procurement opportunities.

b. Impermissible Actions. A recipient may not use Federal assistance to finance:

(1) Improper Contract Expansion. A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the original 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. The Common Grant Rules require the recipient to have procurement procedures that preclude the recipient from acquiring property or services it does not need.

(2) Cardinal Changes. A significant change in contract work (property or services) 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. Such practices are sometimes informally referred to as "tag-ons." A change within the scope of the contract (sometimes referred to as an "in-scope" change) is not a "tag-on" or cardinal change.

(a) Identifying Cardinal Changes. Although FTA has provided additional guidance in its Best Practices Procurement Manual, FTA has not developed a finite list of acceptable contract changes. Recognizing a cardinal change to a third party contract can be difficult. A cardinal change cannot be identified

easily by assigning a specific percentage, dollar value, number of changes, or other objective measure that would apply to all cases.

(b) Changes in Quantity. To categorize virtually any change in quantity as a prohibited cardinal change (sometimes referred to as an "out-of-scope" change) fails to account for the realities of the marketplace and unnecessarily restricts a recipient from exercising reasonable freedom to make minor adjustments contemplated fairly and reasonably by the parties when they entered into the contract. The U.S. Supreme Court decision in *Freund v. United States*, 260 U.S. 60 (1922) supports FTA's policy.

(c) Tests. Among other things, customary marketing practices can influence the determination of which changes will be "cardinal." Other tests involve the nature and extent of the work to be performed, the amount of effort involved, whether the change was originally contemplated at the time the original contract was entered into, or the cumulative impact on the contract's quantity, quality, costs, and delivery terms.

(d) Rolling Stock. In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change would, at this time, include a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, and colors, exterior paint schemes, signage, and floor covering, and other similar changes to be permissible changes.

(e) Federal Procurement Standards. The broader standards applied in Federal contracting practice reflected in Federal court decisions, Federal Boards of Contract Appeals decisions, and U.S. Comptroller General decisions provide guidance in determining whether a change would be treated as a cardinal change. FTA does not imply that these Federal procurement decisions are controlling. FTA intends to consider the collective wisdom within these decisions in determining the nature of third party contract changes along the broad spectrum between permissible changes and impermissible cardinal changes. Other guidance can be found in FTA's Best Practices Procurement Manual and "Frequently Asked Questions" at the FTA Web site: **http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6039.html.**

FTA intends to monitor its recipients and oversight contractors to ensure that this concept is well understood and uniformly applied. This approach permits greater latitude but, because it requires analysis, it can sometimes require a greater knowledge of Federal contracting practices. In any event, before attempting to change the terms of its contract, the recipient should review the contract's provisions to ensure that the contract permits the change sought.

8. THE OPEN MARKET. The recipient will probably acquire most of the property and services it needs through procurements in the open market. The next two chapters of this circular will address proper procedures for conducting and administering such procurements.

VI. CHAPTER VI

PROCEDURAL GUIDANCE FOR OPEN MARKET PROCUREMENTS

1. COMPETITION REQUIRED. Except as permitted by Federal law or regulations, the Common Grant Rules require a recipient of Federal assistance to use third party procurement procedures that provide full and open competition. The Federal Transit Administration's (FTA) enabling legislation at 49 U.S.C. Section 5325(a), also requires an FTA recipient to conduct all third party procurements financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition as determined by FTA. The recipient may make third party contract awards on the basis of:

   a. Solicitation by the Recipient. Compliance with the solicitation procedures described in this Chapter will fulfill FTA requirements for "full and open competition."

   b. Unsolicited Proposals. A recipient may also enter into a third party contract based on an unsolicited proposal, as defined in Chapter I of this circular, when authorized by applicable State or local 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, FTA expects the recipient to seek competition. To satisfy the requirement for full and open competition, FTA expects the recipient to take the following actions before entering into a contract resulting from an unsolicited proposal:

      (1) Receipt. Publicize its receipt of the unsolicited proposal,

      (2) Adequate Description. Publicize an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought,

      (3) Interest in the Property or Services. Publicize its interest in acquiring the property or services described in the proposal,

      (4) Adequate Opportunity to Compete. Provide an adequate opportunity for interested parties to comment or submit competing proposals, and

      (5) Contract Award Based on Proposals Received. 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 property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, the recipient 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 property or services proposed.

c. Prequalification. Prequalification lists are most commonly used in procurements of property involving lengthy evaluations needed to determine whether it satisfies the recipient's standards. The Common Grant Rule for governmental recipients permits a recipient to prequalify people, firms, and property for procurement purposes under the following standards:

(1) Lists. The recipient ensures that all prequalification lists it uses are current.

(2) Sources. The recipient ensures that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition.

(3) Qualification Periods. The recipient permits potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). FTA, however, does not require a recipient to hold a particular solicitation open to accommodate a potential supplier that submits property for approval before or during that solicitation. Nor must a recipient expedite or shorten prequalification evaluations of bidders, offerors, or property presented for review during the solicitation period.

Prequalification should not be confused with reviews of technical qualifications that are an essential process in two-step procurements and qualifications-based procurements, as discussed further in subsections 3.e and 3.f of this Chapter, respectively.

2. SOLICITATION REQUIREMENTS AND RESTRICTIONS. The Common Grant Rules require that each solicitation provide the following information:

a. Description of the Property or Services. The solicitation and the contract awarded must include a clear and accurate description of the recipient's technical requirements for the property or services to be acquired in a manner that provides for full and open competition.

(1) What to Include. The description may include a statement of the qualitative nature of the property or services to be acquired. When practicable, the recipient should describe its requirements in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. The Common Grant Rules for governmental recipients states that "Detailed product specifications should be avoided if at all possible." Both Common Grant Rules express a preference for performance or functional specifications, but do not prohibit the use of detailed technical specifications when appropriate.

(2) Quantities Limited to the Recipient's Actual Needs. FTA limits Federal assistance to the amount necessary to support the quantity of property or extent of services the recipient actually needs at the time of acquisition. The recipient may not add quantities or options to contracts solely to allow assignments at a later date. FTA will not knowingly support the additional cost of contract rights to property or services excess to the recipient's immediate needs, even though the recipient may assign its excess contract rights to others.

(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 recipient must identify the salient characteristics of the named brand that offerors must provide. When using a "brand name" specification, the recipient does not need to reverse-engineer a complicated part to identify precise measurements or specifications in order to describe its salient characteristics. FTA's "Best Practices Procurement Manual," (BPPM) contains additional information on preparation of specifications including examples with specific language.

(4) Prohibitions. The Common Grant Rules prohibit solicitation requirements that contain features that unduly restrict competition. FTA recipients are also prohibited by 49 U.S.C. Section 5325(h) from using FTA assistance to support an exclusionary or discriminatory specification. Some situations considered to be impermissibly restrictive of competition include, but are not limited to, the following, all of which are identified in one or both Common Grant Rules:

(a) Excessive Qualifications. Imposing unreasonable business requirements for bidders or offerors.

(b) Unnecessary Experience. Imposing unnecessary experience requirements for bidders and offerors.

(c) Improper Prequalification. Using prequalification procedures that conflict with the prequalification standards described in subsection 1.c of this Chapter.

(d) Retainer Contracts. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.

(e) Excessive Bonding. To encourage greater contractor participation in FTA assisted projects, FTA does not require the recipient to impose bonding requirements on its third party contractors other than construction bonding specified by the Common Grant Rules and this circular for construction. FTA discourages unnecessary bonding because it increases the cost of the contract

and restricts competition, particularly by disadvantaged business enterprises. Bond companies exercise their discretion and assure their profits primarily by declining to undertake excessive risks. Consequently many bidders have limited "bonding capacity." Unnecessary performance bonding requirements reduce a prospective bidder's or offeror's capability to bid or offer a proposal on bonded work. Small businesses with short histories may have particular difficulty obtaining bonds as may be specified.

Nevertheless, even though bonding can be expensive, FTA recognizes that a recipient might find bid, performance, or payment bonds to be desirable. Because bonding requirements can limit contractor participation, FTA expects the recipient's bonding requirements to be reasonable and not unduly restrictive. FTA, however, will not challenge State or local bonding requirements as unreasonably restrictive of competition, even though they might exceed Federal requirements. Nevertheless, if the recipient's bonding policies result in such "excessive bonding" that it would violate the Common Grant Rules as restrictive of competition. FTA will not provide Federal assistance for those procurements. Thus if the recipient's bonding policies far exceed those described in this subparagraph or are permissible under State or local law, the recipient should obtain FTA's written concurrence to ensure the availability of Federal assistance for the project.

(f) Brand Name Only. Specifying 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.

(g) In-State or Local Geographic Restrictions. Specifying 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. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA recipient from limiting its bus purchases to in-State dealers. Exceptions expressly mandated or encouraged by Federal law include the following:

1 Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.

2 Licensing. A State may enforce its licensing requirements, provided that those State requirements do not conflict with Federal law.

3 Major Disaster or Emergency Relief. Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and

agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.

(h) Organizational Conflicts of Interest. Engaging in practices that result in organizational conflicts of interest as prohibited by the Common Grant Rules:

1 Occurrence. An organizational conflict of interest occurs when any of the following circumstances arise:

a Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.

b Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.

c Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

2 Remedies. FTA expects the recipient to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

(i) Restraint of Trade. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies. Questionable practices would include, but not be limited to submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.

(j) Arbitrary Action. Taking any arbitrary action in the procurement process.

b. Evaluation Factors. The solicitation must identify all factors to be used in evaluating bids or proposals.

c. Contract Type Specified. The recipient's specifications should state the type of contract that will be awarded.

(1) Typical Contract Types. Contract types may include, but are not limited to, the following:

(a) 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.

(b) 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 the uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

(2) Prohibited or Restricted Contract Types. The Common Grant Rule for governmental recipients provides more guidance on contract type than does the Common Grant Rule for non-governmental recipients, which merely authorizes the recipient to select the type of contract it will use (for example, fixed price, cost reimbursement, purchase order, or incentive contract) if it is appropriate for the particular procurement and promotes the best interests of the program or project involved.

The following contract types are restricted or prohibited:

(a) Cost Plus a Percentage of Cost—Prohibited. The Common Grant Rules expressly prohibit the use of the cost plus a percentage of cost method of contracting.

(b) Percentage of Construction Cost—Prohibited. The Common Grant Rules expressly prohibit the use of the percentage of construction cost method of contracting.

(c) Time and Materials—Restricted. The Common Grant Rule for governmental recipients permits the use of time and material contracts only:

1 When to Use. After determining that no other contract type is suitable; and

2 Firm Ceiling Price. If the contract specifies a ceiling price that the contractor may not exceed except at its own risk.

FTA strongly encourages non-governmental recipients to use similar procedures.

d. 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. *See*, Chapter IV, subsection 2.b of this circular, and FTA's latest Master Agreement for references to Federal requirements established following publication of this circular.

e. 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. *See*, Chapter IV, subsection 2.a of this circular and FTA's latest Master Agreement that may reference more Federal requirements.

f. Award to Other Than the Low Bidder. If the recipient intends to reserve its right to award to other than the low bidder or offeror, that information should be stated in the solicitation document.

g. Rejection of All Bids or Offers. If the recipient intends to reserve its right to reject all bids or offers, that information should be stated in the solicitation document.

3. METHODS OF PROCUREMENT. The recipient should use competitive procedure(s) appropriate for the acquisition undertaken. The procedures used must comply with State 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 the Common Grant Rule for governmental recipients, supplemented by FTA policies that address the needs of FTA recipients.

a. Micro-Purchases. Consistent with the Federal Acquisition Regulation (FAR), FTA considers micro-purchases to be those purchases of $3,000 or less.

(1) When Appropriate. If permitted by State and local law, the recipient may acquire property and services valued at $3,000 or less without obtaining competitive quotations. These 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. FTA does not intend to imply that the recipient must treat any purchase of $3,000 or less as a micro-purchase. The recipient may set lower thresholds for micro-purchases in compliance with State and local law, or otherwise as it considers appropriate.

(2) Procedures. The following procedures apply to micro-purchases:

(a) Competition. The recipient should distribute micro-purchases equitably among qualified suppliers.

(b) Prohibited Divisions. The recipient may not divide or reduce the size of its procurement merely to come within the micro-purchase limit.

(c) Documentation. FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made its determination. FTA does not require the recipient to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.

b. Small Purchases. The Common Grant Rule for governmental recipients authorizes governmental recipients to use relatively simple and informal small purchase procedures as follows:

(1) When Appropriate. Small purchase procedures may be used to acquire services, supplies, or other property valued at more than the micro-purchase threshold (currently, $3,000) but less than the Federal simplified acquisition threshold at 41 U.S.C. Section 403(11), currently $100,000. (FTA recognizes the small purchase threshold to be the same as the simplified acquisition threshold.) *Also see,* Chapter II, Subsection 3.b. These purchases are also exempt from FTA's Buy America requirements. FTA does not intend to imply that any purchase of $100,000 or less must be treated as a small purchase. The recipient may set lower thresholds for small purchases in compliance with State and local law, or otherwise as it considers appropriate.

(2) Procedures. When using small purchase procedures:

(a) Competition. The recipient must obtain price or rate quotations from an adequate number of qualified sources.

(b) Prohibited Divisions. The recipient may not divide or reduce the size of its procurement to avoid the additional procurement requirements applicable to larger acquisitions.

c. Sealed Bids (Formal Advertising). The Common Grant Rule for governmental recipients acknowledges sealed bidding to be a generally accepted procurement method in which bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price.

(1) When Appropriate. The Common Grant Rule for government recipients states a preference for the sealed bids procurement method for acquiring property,

construction, and other services. Sealed bid procurements should be used when the following circumstances are present:

(a) Precise Specifications. A complete, adequate, precise, and realistic specification or purchase description is available.

(b) Adequate Sources. Two or more responsible bidders are willing and able to compete effectively for the business.

(c) Fixed Price Contract. The procurement generally lends itself to a firm fixed price contract.

(d) 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 discussed in later sections of this Chapter, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.

(e) 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. This contrasts with Competitive Proposal procedures in which discussions with individual offerors are expected to be necessary and may take place at any time after receipt of proposals. However, a pre-bid conference with prospective bidders before bids have been received can be useful.

(2) Procurement Procedures. The following procedures apply to sealed bid procurements:

(a) Publicity. The invitation for bids is publicly advertised.

(b) Adequate Sources. Bids are solicited from an adequate number of known suppliers.

(c) Adequate Specifications. The invitation for bids, including any specifications and pertinent attachments, describes the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.

(d) Sufficient Time. Bidders are allowed sufficient time to prepare bids before the date of bid opening.

(e) Public Opening. All bids are publicly opened at the time and place prescribed in the invitation for bids.

(f) Fixed Price Contract. A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can sometimes be appropriate. When specified in the bidding documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid; payment discounts are used to determine the low bid only when prior experience indicates that such discounts are typically taken.

(g) Rejection of Bids. Any or all bids may be rejected if there is a sound, documented business reason.

FTA strongly encourages non-governmental recipients to use similar procedures.

d. Competitive Proposals (Request for Proposals). The Common Grant Rule for governmental recipients acknowledges the use of competitive proposals to be a generally accepted procurement method when the nature of the procurement does not lend itself to sealed bidding and the recipient expects that more than one source will be willing and able to submit an offer or proposal.

(1) When Appropriate. Competitive proposals should be used when any of the following circumstances are present:

(a) Type of Specifications. The property 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 the contract award on factors other than price alone are present.

(b) Uncertain Number of Sources. Uncertainty about whether more than one bid will be submitted in response to an invitation for bids and the recipient lacks the authority or flexibility under State or local law to negotiate the contract price if it receives only a single bid.

(c) Price Alone Not Determinative. Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors. In different types of negotiated acquisitions, the relative importance of cost or price may vary. When the recipient's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirements, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price.

(d) Discussions Expected. Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals. This contrasts with Sealed Bids (Formal Advertising) procedures in which discussions with individual bidders are not likely to be necessary, as award of the contract will be made based on price and price-related factors alone.

(2) Procurement Procedures. The following procedures apply to procurements by competitive proposals:

(a) Publicity. The request for proposals is publicly advertised.

(b) Evaluation Factors. All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed.

(c) Adequate Sources. Proposals are solicited from an adequate number of qualified sources.

(d) Evaluation Method. A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.

(e) Price and Other Factors. An award is made to the responsible offeror whose proposal is most advantageous to the recipient's program with price and other factors considered.

(f) Best Value. If permitted under its State or local law, the recipient may award the contract to the offeror whose proposal provides the greatest value to the recipient. To do so, the recipient's 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. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The recipient should 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. Apart from the statutory requirement that the contract must support the recipient's public transportation project consistent with applicable Federal laws and regulations, FTA does not require any specific factors or analytic process.

FTA strongly encourages non-governmental recipients to use similar procedures.

e. Two-Step Procurement Procedures. If permitted by State and local law, the recipient may use two-step procurement procedures in both sealed bid and competitively negotiated procurements, provided the opportunity for full and open competition is retained.

(1) Review of Technical Qualifications and Approach. The first step is a review of the prospective contractors' technical approach to the recipient's request and technical qualifications to carry out that approach. The recipient then may narrow the competitive range to prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.

(2) Review of Bids and Proposals Submitted by Qualified Prospective Contractors. The second step consists of soliciting and reviewing complete bids (sometimes referred to as "two-step sealed bidding") or proposals (as in "competitive negotiations"), including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, the recipient should attempt to solicit bids or proposals from at least three qualified prospective contractors. Unlike qualifications-based procurement procedures required for A&E services, and other contracts covered by 49 U.S.C. Section 5325(b) discussed in subsection 3.f of this Chapter, FTA expects the recipient to consider all bid or proposal prices submitted as well as other technical factors, rather than limiting reviews to the most qualified bidder or offeror.

f. Architectural Engineering (A&E) Services and Other Services. FTA's enabling legislation at 49 U.S.C. Section 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the "Brooks Act," 40 U.S.C. Sections 1101 through 1104, to acquire A&E services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and 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 as described below.

(1) Qualifications-Based Procurement Procedures Required. The recipient must use qualifications-based procurement procedures not only when contracting for A&E services, but also for other services listed in 49 U.S.C. Section 5325(b)(1) that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. For example, a contractor performing program management, project design, construction management, or engineering services in which that contractor would select the finished products to be acquired for an FTA assisted construction project must be selected through qualifications-based procurement procedures.

(2) Qualifications-Based Procurement Procedures Prohibited. Unless FTA determines otherwise in writing, a recipient may not use qualifications-based procurement procedures 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. Even if a contractor has performed services listed herein in support of a construction, alteration, or repair project involving real property, selection of that contractor to perform similar services not relating to construction may not be made through the use of qualifications-based procurement procedures.

A project involving construction does not always require that qualifications-based procurement procedures be used. Whether or not qualifications-based procurement procedures may be used depends on the actual services to be performed in connection with the construction project. For example, the design or fabrication of message signs, signals, movable barriers, and similar property that will become off-the-shelf items or will be fabricated and delivered as final end products for installation in an FTA assisted construction project are not services for which qualifications-based procurement procedures may be used. Nor are actual construction, alteration, or repair to real property the type of services for which qualifications-based procurement procedures may be used.

(3) Qualifications-Based Procurement Procedures. The following procedures apply to qualifications-based procurements:

(a) Qualifications. Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award.

(b) Price. Price is excluded as an evaluation factor.

(c) Most Qualified. Negotiations are first conducted with only the most qualified offeror.

(d) 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.

(e) Effect of State Laws. To the extent that a State has, before August 10, 2005, adopted by law, an equivalent State qualifications-based-procurement requirement for acquiring architectural, engineering, and design services, State procedures, rather than Federal "Brooks Act" procedures (40 U.S.C. Sections 1101 through 1104), may be used.

(4) Audits and Indirect Costs. As required by 49 U.S.C. Section 5325(b)(2), the following requirements apply to a third party contract for program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services:

(a) Performance of Audits. The third party contract or subcontract must be performed and audited in compliance with FAR Part 31 cost principles.

(b) Indirect Cost Rates. The recipient and the third party contractor, its subcontractors and subrecipients, if any, must accept FAR indirect cost rates for the one-year applicable accounting periods established by a cognizant Federal or State government agency, if those rates are not currently under dispute.

(c) Application of Rates. After a firm's indirect cost rates established as described in subparagraph 3.f(4)(b) above are accepted, those rates will apply for purposes of contract estimation, negotiation, administration, reporting, and payments, not limited by administrative or de facto ceilings.

(d) Prenotification; Confidentiality of Data. Before requesting or using cost or rate data described in subparagraph 3.f(4)(c) above, a recipient must notify the affected firm(s). That data must be kept confidential and may not be accessible by or provided by the agency or group of agencies that share cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, that cost and rate data may not be disclosed under any circumstances. FTA recognizes that many States have "Open Records" laws that may make it difficult to maintain confidential cost or rate data. As a result, before requesting or using a firm's cost or rate data, not only should a recipient notify the affected firm, but it must also obtain permission to provide that data in response to a valid request under applicable State law. The confidentiality requirements of 49 U.S.C. 5325(b)(2)(D) cannot be waived, even if those confidentiality requirements conflict with State law or regulations.

g. Design-Bid-Build. The design-bid-build procurement method requires separate contracts for design services and for construction.

(1) Design Services. For design services, the recipient must use qualifications-based procurement procedures, in compliance with applicable Federal, State and local law and regulations.

(2) Construction. Because the recipient may not use qualifications-based procurement procedures for the actual construction, alteration or repair of real property, the

recipient generally must use competitive procedures for the construction. These may include sealed bidding or competitive negotiation procurement methods, as appropriate.

h. Design-Build. The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction. FTA's enabling legislation expressly authorizes the use of FTA capital assistance to support design-build projects "after the recipient complies with Government requirements," 49 U.S.C. Section 5325(d)(2).

(1) Procurement Method Determined by Value. First, the recipient must separate the various contract activities to be undertaken and classify them as design or construction, and then calculate the estimated total value of each. Because both design and construction are included in a single procurement, the FTA expects the recipient to use the procurement method appropriate for the services having the greatest cost, even though other necessary services would not typically be procured by that method.

(a) Construction Predominant. The construction costs of a design-build project are usually predominant so that the recipient would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based "Brooks Act" procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, an FTA recipient may not use qualifications-based procurement procedures to acquire architectural engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services unless required by State law adopted before August 10, 2005.

(b) Design Services Predominant. In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, FTA expects the recipient to use qualifications-based procurement procedures based on the "Brooks Act," 40 U.S.C. Sections 1101 through 1104, as described in subsection 3.e of this Chapter.

(2) Selection Processes. The recipient may structure its design-build procurement using one or more steps as described below:

(a) One-Step Method. The recipient may undertake its design-build procurement in a single step.

(b) Two-Step Method. Another procurement method the recipient may use for large design-build projects is a two-step selection process as authorized for Federal Government use by 41 U.S.C. Section 253m. This method consists of:

1 Review of Technical Qualifications and Approach. The first step is a review of the prospective contractors' technical qualifications and technical approach to the project. The recipient may then narrow the competitive range to those prospective contractors with satisfactory qualifications that demonstrate a technically satisfactory approach.

2 Review of Complete Proposals. The second step consists of soliciting and reviewing complete proposals, including price, submitted by prospective contractors first determined to be qualified.

By using this two-step method, it will not be necessary for the recipient to undertake extensive proposal reviews, nor will prospective offerors need to engage in expensive proposal drafting. This two-step selection procedure is separate and distinct from prequalification and is but one procurement method available to the recipient.

i. Other Than Full and Open Competition. Normally, the recipient must provide for full and open competition when soliciting bids or proposals. The Common Grant Rule for governmental recipients, however, acknowledges that under certain circumstances, a recipient may conduct procurements without providing for full and open competition.

(1) When Appropriate. A recipient may use noncompetitive proposals only when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:

(a) Adequate Competition. After soliciting several sources, FTA expects the recipient to review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more bids or proposals. After the recipient determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, the recipient may determine the competition adequate. A cost analysis must be performed in lieu of a price analysis when this situation occurs.

(b) Sole Source. When the recipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make a sole source award. When the

recipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified.

1 Unique Capability or Availability. The property or services are available from one source if one of the conditions described below is present:

a 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 the recipient only from one source and has not in the past been available to the recipient from another source.

b Patents or Restricted Data Rights.. Patent or data rights restrictions preclude competition.

c 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.

d 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 the recipient's needs.

2 Single Bid or Single Proposal. Upon receiving a single bid or single proposal in response to a solicitation, the recipient 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.

a Adequate Competition. FTA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the recipient's control. Many unrelated factors beyond the recipient's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, FTA's competition requirements will be fulfilled, and the procurement will qualify as a valid competitive award.

b Inadequate Competition. FTA acknowledges competition to be inadequate when, caused by conditions within the recipient's control. For example, if the specifications used were within the recipient's control and those specifications were unduly restrictive, competition will be inadequate.

(c) Unusual and Compelling Urgency. The Common Grant Rule for governmental recipients permits the recipient to limit the number of sources from which it solicits bids or proposals when a recipient has such an unusual and urgent need for the property or services that the recipient would be seriously injured unless it were permitted to limit the solicitation. The recipient may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the property or services.

(d) Associated Capital Maintenance Item Exception Repealed. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) repealed the special procurement preference previously authorized for associated capital maintenance items. Thus, any sole source procurement of associated capital maintenance items must qualify for an exception under the same standards that would apply to other sole source acquisitions.

(e) Authorized by FTA. The Common Grant Rules provide Federal agencies authority to permit a recipient to use noncompetitive proposals. Under this authority, FTA has made the following determinations:

1 Consortium, Joint Venture, Team, Partnership. With some exceptions, when FTA awards a grant agreement or enters into a cooperative agreement with a consortium, joint venture, team, or partnership, or provides FTA assistance for a research project in which FTA has approved the participation of a particular firm or combination of firms in the project work, the grant agreement or cooperative agreement constitutes approval of those arrangements. In such cases, FTA expects the recipient to use competition, as feasible, to select other participants in the project.

2 FAR Standards. To ensure that the recipient has flexibility equal to that of Federal contracting officers, FTA authorizes procurement by noncompetitive proposals in all of the circumstances authorized by FAR Part 6.3. In addition to circumstances discussed in the Common Grant Rules, the FAR authorizes less than full and open competitive procurements in one or more of the following circumstances:

a Statutory Authorization or Requirement. To comply with Department of Transportation (DOT) appropriations laws that include specific statutory requirements, with the result that only a single contractor can perform certain project work.

b National Emergency. To maintain a facility, producer, manufacturer, or other supplier available to provide supplies or services in the event of a national emergency or to achieve industrial mobilization.

c Research. To establish or maintain an educational or other non-profit institution or a federally funded research and development center that has or will have an essential engineering, research, or development capability.

d Protests, Disputes, Claims, Litigation. To acquire the services of an expert or neutral person for any current or anticipated protest, dispute, claim, or litigation.

e International Arrangements. When precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or when prohibited by the written directions of a foreign government reimbursing the recipient for the cost of the acquisition of the supplies or services for that government.

f National Security. When the disclosure of the recipient's needs would compromise the national security.

g Public Interest. When the recipient determines that full and open competition in connection with a particular acquisition is not in the public interest.

(2) When Prohibited. Less than full and open competition is not justified based on:

(a) Failure to Plan. The recipient's lack of advance planning, or

(b) Limited Availability of Federal Assistance. Concerns about the amount of Federal assistance available to support the procurement (for example, expiration of Federal assistance previously available for award).

(3) Procurement Procedures. When less than full and open competition is available to the recipient, the Common Grant Rule for governmental recipients directs the recipient to:

(a) Potential Sources. Solicit offers from as many potential sources as is practicable under the circumstances.

(b) Sole Source Justification. If the recipient decides to solicit an offer from only one source, the recipient must justify its decision adequately in light of the standards of subparagraph 3.i(1)(b) of this Chapter. FTA expects this sole source justification to be in writing.

(c) Cost Analysis. Prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits.

(d) Preaward Review. Submit the proposed procurement to FTA for preaward review if FTA so requests.

4. ELIGIBLE COSTS. Property and services must be eligible for Federal participation under the standards of the Federal cost principles applicable to the recipient before the recipient may use FTA assistance to support its costs (2 CFR Part 220, 2 CFR Part 225, 2 CFR Part 230, or FAR Part 31). A recipient may use its own cost principles that comply with applicable Federal cost principles. FTA assistance may support contract costs or prices based on estimated costs only if the costs incurred or cost estimates included in negotiated prices comply with applicable Federal cost principles, and the property or services are eligible for Federal assistance under the terms of the underlying grant or cooperative agreement.

5. INCENTIVE COSTS AND PAYMENTS. SAFETEA-LU added a new amendment, 49 U.S.C. Section 5309(l), authorizing incentive payments to contractors that provide accurate cost and ridership estimates in connection with a new fixed guideway capital project, and to contractors that enable a new fixed guideway capital project to be completed for less than its original estimated cost. These incentive payments will be allowable costs in addition to other eligible project costs and must be "necessary and reasonable." *See*, the Questions and Answers pertaining to incentive contracts at FTA's Web site: **http://www.fta.dot.gov/funding/thirdpartyprocurement/faq/grants_financing_6148.html**.

6. COST ANALYSIS AND PRICE ANALYSIS. The Common Grant Rules require the recipient to perform a cost analysis or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.

   a. Cost Analysis. The recipient must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. The recipient must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as

professional consulting and A&E contracts, and so forth). The recipient is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order. The recipient, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

(1) Federal Cost Principles. Federal cost principles contain many requirements about the allowability and allocability of costs.

(2) Profit. FTA expects the recipient to negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which the recipient performs or acquires a cost analysis. To establish a fair and reasonable profit, the recipient needs to consider the complexity of the work to be performed, the risk undertaken by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.

b. Price Analysis. If the recipient determines that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price. As discussed previously in subsection 3.a of this Chapter, the price analysis for micro-purchases may be limited. Similarly, the recipient may use an abbreviated price analysis for small purchases in most cases. One method to record this price analysis is through the use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.

c. Guidance on Cost and Price Analysis. FTA recognizes that some recipients may have difficulty obtaining the information necessary to conduct a proper cost or price analysis. Although neither FTA nor DOT may change the Common Grant Rules' requirements for cost or price analysis, FTA continues to seek a fair, practical solution to this problem consistent with the flexibility provided to Federal contracting officers under the FAR The recipient may use the following resources as guidance in preparing cost or price analyses:

(1) FTA's "Best Practices Procurement Manual," Chapter 5,

(2) The National Transit Institute Course, "Cost or Price Analysis and Risk Assessment,"

(3) Pricing Guide for FTA Grantees, FTA Web Site: **http://www.fta.dot.gov/documents/Helpline_Price_Guide.doc.,**

(4) FAR Part 31, Contract Cost Principles and Procedures, and

(5) Defense Contract Audit Agency Audit Manual. *See*, the DCAA Web site: **http://www.dcaa.mil**.

Note, however, that the requirements of FAR Part 31 and the Defense Contract Audit Agency Audit Manual may differ from restrictions applicable to an FTA recipient. Each FTA recipient must comply with those Federal laws and regulations directly applicable to it.

7. EVALUATIONS. The following standards apply:

a. General. When evaluating bids or proposals submitted, FTA expects the recipient to consider all evaluation factors specified in its solicitation documents, and evaluate the bids or offers only on the evaluation factors included in those solicitation documents. The recipient may not modify its evaluation factors after bids or proposals have been submitted without re-opening the solicitation.

b. Options. In awarding the contract that will include options, the following standards apply:

(1) Evaluation Required. In general, FTA expects the recipient to 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.

(2) Evaluation Not Required. The recipient need not evaluate bids or offers for any option quantities when the recipient determines that evaluation would not be in its best interests. An example of a circumstance that may support a recipient's determination not to evaluate bids or offers for option quantities is when the recipient is reasonably certain that funds will not be available to permit it to exercise the option.

c. 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 recipient determines would be necessary or helpful. Although many FTA recipients assign evaluation duties to their own personnel, a recipient lacking qualified personnel within its organization may contract for the evaluation services it needs. If the recipient does contract for evaluation services, the procurement standards of this circular will apply to those contracts and to those contractors selected to perform procurement evaluation functions on behalf of the recipient.

8. CONTRACT AWARD. The following provisions apply to third party contract awards:

   a. Award to Other Than the Lowest Bidder or Offeror. Federal transit law at 49 U.S.C. Section 5325(c) authorizes the recipient to 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. The recipient may also award a contract to other than the offeror whose proposal is lowest, when stated in the evaluation factors of the solicitation. In both cases, the recipient should include a statement in its solicitation document reserving the right to award the contract to other than the low bidder or offeror.

   b. Award Only to a Responsible Bidder or Offeror. SAFETEA-LU amended 49 U.S.C. Section 5325 to require FTA assisted contract awards be made only to "responsible" contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. Responsibility is a procurement issue that is determined by the recipient after receiving bids or proposals and before making contract award. FTA expects the prospective contractor to demonstrate affirmatively to the recipient that it qualifies as "responsible" under the standards of 49 U.S.C. Section 5325, and that its proposed subcontractors also qualify as "responsible."

      To designate a prospective contractor "responsible" as required by 49 U.S.C. Section 5325, FTA expects the recipient, at a minimum, to 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 must fulfill the following criteria:

      (1) Integrity and Ethics. Have a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A),

      (2) Debarment and Suspension. Be 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,

      (3) Affirmative Action and DBE. Be in compliance with the Common Grant Rules' affirmative action and FTA's Disadvantaged Business Enterprise requirements,

      (4) Public Policy. Be in compliance with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325(j)(2)(B),

      (5) Administrative and Technical Capacity. Have 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),

(6) Licensing and Taxes. Be in compliance with applicable licensing and tax laws and regulations,

(7) Financial Resources. Have, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D),

(8) Production Capability. Have, or can obtain, the necessary production, construction, and technical equipment and facilities,

(9) Timeliness. Be able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments, and

(10) Performance Record. Be able to provide:

(a) Current Performance. A satisfactory current performance record, and

(b) Past Performance. A satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:

1 Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,

2 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

3 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 nonresponsible, 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 nonresponsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. FTA expects the recipient 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.

Before entering into a full funding contract for a fixed guideway project, the recipient must now consider the prospective contractor's past performance in estimating costs and ridership as reported in the Contractor Performance Assessment Reports, as required by 49 U.S.C. Section 5325(j)(2)(C).

c. Rejection of Bids and Proposals. Depending on the type of recipient, the following applies:

(1) Governmental Recipients. The Common Grant Rule for governmental recipients asserts the recipient's right to reject all bids submitted in response to an invitation for bids or request for proposals.

(2) Non-Governmental Recipients. The Common Grant Rule for non-governmental recipients authorizes the recipient to reject any and all bids and proposals when it is in the recipient's interest to do so.

d. Extent and Limits of Contract Award. A 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.

VII. CHAPTER VII

PROTESTS, CHANGES AND MODIFICATIONS, DISPUTES, CLAIMS, LITIGATION, AND SETTLEMENTS

The Common Grant Rules assign responsibility to the recipient for resolving all contractual and administrative issues arising out of their third party procurements, including source evaluation and selection, including protests of awards, disputes, and claims using good administrative practices and sound business judgment. The Federal Transit Administration (FTA) also encourages the recipient to use appropriate alternative dispute resolution procedures. Neither FTA nor the Common Grant Rules relieve the recipient of any responsibility under its contracts to resolve disagreements that may arise in the course of contract formation or contract administration.

FTA is not a party to its recipients' third party contracts, and does not have any obligation to any participant in its recipients' third party contracts. In general, FTA will not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern. Examples of "Federal concerns" include, but are not limited to, situations "where a special Federal interest is declared because of program management concerns, possible mismanagement, impropriety, waste, or fraud." Nevertheless, FTA can become involved in the recipient's administrative decisions when a recipient's protest decision is appealed to FTA, or when the recipient seeks to use FTA assistance to support the costs of settlements or other resolutions of protests, disputes, claims, or litigation.

1. PROTESTS.

   a. The Recipient's Role and Responsibilities. The Common Grant Rules charge the recipient with the initial responsibility to resolve protests of third party contract awards.

      (1) Protest Procedures. Apart from other methods the recipient may have to resolve third party contract issues, such as mediation or arbitration, the Common Grant Rule for governmental recipients requires the recipient to have protest procedures. While the Common Grant Rule for non-governmental recipients does not impose a similar requirement on a non-governmental recipient, FTA expects each recipient to have appropriate written protest procedures, as part of its requirement to maintain or acquire adequate technical capacity to implement the project.

      (2) Responsibilities to FTA. The recipient's minimum responsibilities to FTA consist of the following:

         (a) Notify FTA Expeditiously. The Common Grant Rule for governmental recipients requires a governmental recipient to notify FTA when it receives a third party contract protest to which this circular applies, and to keep FTA

informed about the status of the protest. A non-governmental recipient involved in a protest is similarly expected to notify FTA when it receives a third party contract protest to which the circular applies, and to similarly keep FTA informed about the status of the protest. The recipient is expected to provide the following information:

1 Subjects. A list of protests involving third party contracts and potential third party contracts that:

a Have a value exceeding $100,000, or

b Involve a controversial matter, irrespective of amount, or

c Involve a highly publicized matter, irrespective of amount.

2 Details. The following information about each protest:

a A brief description of the protest,

b The basis of disagreement, and

c If open, how far the protest has proceeded, or

d If resolved, the agreement or decision reached, and

e Whether an appeal has been taken or is likely to be taken.

3 When and Where. The recipient should provide this information:

a In its next quarterly Milestone Progress Report, and

b At its next Project Management Oversight review, if any.

Small recipients may report less frequently if no protests are outstanding.

4 FTA Officials to Notify. When a recipient denies a bid protest, and especially if an appeal to FTA is likely to occur, FTA expects the recipient to inform the FTA Regional Administrator for the region administering a regional project, or the FTA Associate Administrator for the program office administering a headquarters project directly. FTA also encourages the recipient to keep its FTA project manager informed about protests with which it is involved. In particular, the recipient should contact its project manager about any unusual activity.

(b) Access to Information. FTA expects the recipient to disclose information about any third party procurement protest to FTA upon request. FTA reserves the right to require the recipient to provide copies of a particular protest or all protests, and any or all related supporting documents as FTA may determine necessary.

b. FTA's Role and Responsibilities. FTA has developed an appeals process for reviewing protests of a recipient's procurement decisions.

(1) Requirements for the Protester. The protester must:

(a) Qualify as an "Interested Party." Only an "interested party" qualifies for FTA review of its appeal. An "interested party" is a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the third party contract at issue.

1 Subcontractors. A subcontractor does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement.

2 Consortia/Joint Ventures/Partnerships/Teams. An established consortium, joint venture, partnership, or team that is an actual bidder or offeror and is acting in its entirety, would qualify as an "interested party" because it has a direct economic interest in the results of the procurement. An individual member of a consortium, joint venture, partnership, or team, acting solely in its individual capacity, does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement.

3 Associations or Organizations. An association or organization that does not perform contracts does not qualify as an "interested party," because it does not have a direct economic interest in the results of the procurement.

(b) Exhaust Administrative Remedies. The protester must exhaust its administrative remedies by pursuing the recipient's protest procedures to completion before appealing the recipient's decision to FTA.

(c) Appeal Within Five Days. The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of the recipient's final decision. Likewise, the protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program

office administering its project within five (5) working days of the date when the protester has identified other grounds for appeal to FTA. For example, other grounds for appeal include the recipient's failure to have or failure to comply with its protest procedures or failure to review the protest.

(2) Extent of FTA Review. As provided in the Common Grant Rule for governmental recipients, FTA will limit its review of third party contract protests as follows:

(a) The Recipient's Procedural Failures. FTA will consider a protest if the recipient:

1 Does not have protest procedures, or

2 Has not complied with its protest procedures, or

3 Has not reviewed the protest when presented an opportunity to do so.

(b) Violations of Federal Law or Regulations. FTA will not consider every appeal filed by a protestor of an FTA recipient's protest decision merely because a Federal law or regulation may be involved. Instead, FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA's overall public transportation program. FTA will refer violations of Federal law for which it does not have primary jurisdiction to the Federal authority having proper jurisdiction.

(c) Violations of State or Local Law or Regulations. FTA will refer violations of State or local law to the State or local authority having proper jurisdiction.

(3) FTA Determinations to Decline Protest Reviews. FTA's determination to decline jurisdiction over a protest does not mean that FTA approves of or agrees with the recipient's decision or that FTA has determined the contract is eligible for Federal participation. FTA's determination means only that FTA does not consider the issues presented to be sufficiently important to FTA's overall program that FTA considers a review to be required.

2. CHANGES AND MODIFICATIONS.

a. The Recipient's Role and Responsibilities. The recipient is responsible for issuing, evaluating, and making necessary decisions involving any change to its third party contracts, and any change orders, or modifications it may issue. The recipient is also responsible for evaluating and making the necessary decisions involving any claim of a constructive change. In general, FTA expects each recipient to comply with the following procedures:

(1) Approval Requirements. FTA expects the recipient to have cost justifications supporting each change order it may issue. FTA also expects the recipient's authorized official to approve any proposed change order before it is issued.

(2) Cost Restrictions. To be eligible for FTA assistance under the recipient's grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

A more extensive discussion on Changes and Modifications can be found in FTA's Best Practices Procurement Manual (BPPM).

b. FTA's Role and Responsibilities. FTA does not participate in the recipient's decisions involving change orders, constructive changes, or modifications, but reserves the right to review the recipient's supporting documentation as necessary to determine the extent of FTA assistance that may be used to support those costs.

3. DISPUTES.

a. The Recipient's Role and Responsibilities. The Common Grant Rules charge the recipient with responsibility for evaluating and resolving third party contract disputes. If the recipient intends to request FTA's permission to use Federal assistance to support payments to a third party contractor to settle a dispute, or intends to request increased Federal assistance for that purpose, the recipient's responsibilities are as follows:

(1) Notify FTA. FTA expects the recipient to provide the following information in connection with third party contract disputes in which it is involved:

(a) Subjects. A list of disputes involving third party contracts and potential third party contracts that:

1 Have a value exceeding $100,000,

2 Involve a controversial matter, irrespective of amount, or

3 Involve a highly publicized matter, irrespective of amount.

(b) Details. The following information about each dispute:

1 A brief description of the dispute,

2 The basis of disagreement, and

3 If open, how far the dispute has proceeded, or

4 If resolved, the agreement or decision reached, and

5 Whether an appeal has been taken or is likely to be taken.

(c) When and Where. The recipient should provide this information:

1 In its next quarterly Milestone Progress Report, and

2 At its next Project Management Oversight review, if any.

Small recipients may report less frequently if no disputes are outstanding.

(d) FTA Officials to Notify. FTA also encourages the recipient to keep its FTA project manager informed about disputes with which it is involved. In particular, the recipient should contact its project manager about any unusual activity.

(2) Adequate Documentation. FTA expects the recipient to include adequate documentation in its project files of the facts, events, negotiations, applicable laws, and a legal evaluation of the likelihood of success in any potential litigation involving the dispute as may be needed to justify FTA's concurrence in any compromise or settlement, should FTA concurrence become necessary.

(3) Audit. An audit can help the recipient demonstrate that any settlement costs, if incurred, are necessary, reasonable, adequately documented, and appropriate for FTA support. The recipient should consider conducting or obtaining a formal audit to substantiate each part of a large contract dispute before entering into a settlement. The audit should be conducted in accordance with "Generally Accepted Auditing Standards" as defined by the American Institute of Certified Public Accountants. FTA also encourages the recipient to undertake an audit or similar analysis before settlement of a small dispute.

b. FTA's Role and Responsibilities. FTA generally does not become involved in negotiating the resolution of a recipient's disputes. However, FTA does reserve the right to become involved as follows:

(1) Determine Reasonableness. FTA may review the reasonableness of a negotiated settlement to determine the extent of its participation in the costs of the settlement.

(2) Review Documents. When FTA considers necessary, FTA may review the recipient's files and history pertaining to the dispute or experience under a particular grant or cooperative agreement. If the recipient has already disbursed amounts determined to be ineligible through subsequent audit or FTA review, the recipient must return those amounts to FTA, unless FTA determines otherwise.

FTA reserves the right to defer participation in settlement costs until it receives an adequate audit.

4. CLAIMS AND LITIGATION.

a. The Recipient's Role and Responsibilities. The Common Grant Rules charge the recipient with responsibility for evaluating and resolving third party contract claims and litigation resulting from a contractor's violation, default, or breach of its third party contracts with recipients of Federal assistance. The recipient is also responsible for resolving any claims and litigation the contractor may present against it. Due to FTA's financial interest in the settlement of third party contract claims and litigation, and concerns about matters with significant policy consequences to the Federal Government, FTA expects the recipient to:

(1) Notify FTA. FTA expects the recipient to provide the following information in connection with third party contract claims and litigation with which it is involved.

(a) Subjects. A list of claims and litigation involving third party contracts and potential third party contracts that:

1 Have a value exceeding $100,000,

2 Involve a controversial matter, irrespective of amount, or

3 Involve a highly publicized matter, irrespective of amount.

(b) Details. The following information about each claim or lawsuit:

1 A brief description of the claim or litigation,

2 The basis of disagreement, and

3 If open, how far the claim or litigation has proceeded, or

4 If resolved, the decision or agreement reached, and

5 Whether an appeal has been or is likely to be taken.

(c) When and Where. The recipient should provide this information:

1 In its next quarterly Milestone Progress Report, and

2 At its next Project Management Oversight review, if any.

Small recipients may report less frequently if no claims or litigation are outstanding.

(d) FTA Officials to Notify. FTA also encourages the recipient to keep its FTA project manager informed about claims and litigation with which it is involved. In particular, the recipient should contact its project manager about any unusual activity.

(2) Legal Rights and Remedies. In resolving third party contract claims, FTA expects the recipient to take reasonable measures to pursue its rights and remedies available under law, including settlement, particularly if failure to do so would jeopardize the Federal interest in the project or cause the recipient to seek additional Federal assistance.

b. FTA's Role and Responsibilities. In support of its financial interest in the settlement of claims and litigation involving any federally assisted third party contracts, FTA has retained its discretion to assert the following rights:

(1) Proceeds Recovered. FTA retains a right to a share of any net proceeds recovered through a third party contract claim or litigation, in proportion to the amount FTA has committed to the project, unless FTA permits other uses of the proceeds recovered.

(2) Liquidated Damages. If the third party contract includes a liquidated damages provision, FTA expects the recipient to credit any liquidated damages recovered to the project, unless FTA permits other uses of the liquidated damages. For example, in negotiating the terms of a claim or litigation settlement, it may be reasonable for the recipient to exchange some or all liquidated damages that may be due the recipient for additional property or services.

5. FTA PARTICIPATION IN SETTLEMENTS, ARBITRATION AWARDS, AND COURT AWARDS.

a. The Recipient's Responsibilities.

(1) Settlement Arrangements Must Be Reasonable. FTA recognizes that a settlement may require the recipient to relinquish its rights to amounts it would otherwise be due, including amounts for liquidated damages and other matters, were it to prevail on all matters at issue. Still, FTA expects the recipient to enter into a settlement only if the recipient can justify its terms as reasonable. Reasonable settlement arrangements can take many forms. In certain situations, an agreement by the contractor to provide extra property or services in lieu of payments or reduced payments for damages, including liquidated damages, may be reasonable.

(2) Maintain Sufficient Records. To justify FTA's participation in settlements, arbitration awards, or court awards, the recipient's records must be sufficient to demonstrate that the recipient has taken reasonable and prudent measures to prevent or offset the actions or circumstances resulting in the underlying protest, dispute, claim, or litigation.

(3) Obtain FTA Concurrence. When the recipient incurs costs due to binding arbitration or court decision, FTA expects the recipient to secure FTA review and its written concurrence in a proposed or final settlement involving a dispute, claim, or litigation before using Federal assistance to support its costs if one of the following circumstances is present:

(a) Exceeds $100,000. When the settlement exceeds $100,000.

(b) Insufficient Funds. When the approved project lacks sufficient funds to cover the settlement costs.

(c) Special Federal Interest or Federal Concern. When a special Federal interest or Federal concern is declared due to program management concerns, possible mismanagement, impropriety, waste, or fraud.

b. FTA's Prerogatives.

(1) Review Supporting Documentation. FTA reserves the right to review the recipient's supporting documentation.

(2) Provide Federal Assistance. If FTA assistance is available, FTA may provide a prorated share of any eligible costs resulting from protests, disputes, claims, litigation, or settlements that were not caused by the recipient's mismanagement or are attributable to the contractor, and were otherwise properly incurred.

(3) Deny Federal Assistance. Protests, disputes, claims, litigation, or settlements that result from the recipient's negligence or error are usually ineligible for FTA participation. FTA reserves the right to determine the extent to which FTA assistance may be used for any dispute, claim, litigation, or settlement caused in whole or part by the recipient's negligence or error. Examples of situations that might be caused by a recipient's negligence or error include, but are not limited to, the following:

(a) Right-of-Way. Failure to ensure clear access to all needed right-of-way prior to award of the construction contract.

(b) Utility Agreements. Failure to execute all required utility agreements in time to assure uninterrupted construction progress.

(c) Planning and Scheduling. Failure to undertake comprehensive project planning and scheduling to achieve proper coordination among contractors.

(d) Subsurface Conditions. Failure to inform potential contractors of all available geo-technical information on subsurface conditions.

(e) Materials Compatibility. Failure to ensure that all materials provided by the recipient are compatible with contractor project facilities or equipment or both and available when needed.

(f) Pre-Construction Surveys and Engineering. Failure to complete all pre-construction surveys and engineering prior to issuing the contractor a Notice to Proceed.

(g) Public Authority Approvals. Failure to complete the necessary approvals and agreements from all other public authorities affected by the project before contract award.

(h) Drawing Approvals. Failure by the recipient to approve and provide all design and shop drawings to the contractor promptly as needed.

A. APPENDIX A

REFERENCES

1. Federal Transit Laws, Title 49, United States Code, Chapter 53; also public transportation provisions of Title 23, United States Code.

2. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU), Public Law 109-59, August 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act, 2008, Public Law 110-244, June 6, 2008.

3. Transportation Equity Act for the 21st Century 1998 (TEA-21), Public Law 105-178 as amended by TEA-21 Restoration Act 1998, Public Law 105-206.

4. 7 U.S.C. Sections 2131 *et seq.*—Animal Welfare Act, as amended.

5. 15 U.S.C. Sections 205a *et seq.*— Omnibus Trade and Competitiveness Act (Amendments to the Metric Conversion Act), 15 U.S.C. §§ 205a *et seq.*

6. 15 U.S.C. Section 644 note—Section 7101(a) of the Federal Acquisition Streamlining Act of 1994 (Repeal of Labor Surplus Area Programs).

7. 18 U.S.C. Section 874—Section 1 of the Copeland Anti-Kickback Act, as amended.

8. 18 U.S.C. Section 1001—Criminal Fraud.

9. 20 U.S.C. Sections 1681 *et seq.*—Title IX of the Education Amendments of 1972, as amended (Nondiscrimination on the Basis of Sex).

10. 23 U.S.C. Section 101 note—Section 451 of the Hiring Incentives to Restore Employment Act (HIRE Act), Pub. L. 111-147, Title IV, Section 451, March 18, 2010.

11. 23 U.S.C. Section 512 note—Section 5307(c) of SAFETEA-LU (Intelligent Transportation Systems).

12. 29 U.S.C. Sections 201 *et seq.*—Fair Labor Standards Act, as amended (Wage and Hour Restrictions).

13. 29 U.S.C. Sections 621 through 634—Age Discrimination in Employment Act (Prohibitions).

14. 29 U.S.C. Section 794—Section 504 of the Rehabilitation Act of 1973, as amended (Nondiscrimination under Federal Grants on the Basis of Disability).

15. 29 U.S.C. Section 794d—Section 508 of the Rehabilitation Act of 1973, as amended (Electronic and Information Technology acquired with Federal funding to be Accessible).

16. 31 U.S.C. Section 1352—Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions (Byrd "Anti-Lobbying" Amendment).

17. 31 U.S.C. Sections 3801 *et seq.*—Program Fraud Civil Remedies Act of 1986, as amended.

18. 31 U.S.C. Section 5112(p)—Section 104 of the Presidential $1 Coin Act of 2005 (Use of Coins in Transit Facilities and Equipment).

19. 31 U.S.C. Sections 7501 *et seq.*—Single Audit Act of 1984, as amended (Audits of Federally Funded Programs).

20. 33 U.S.C. Sections 1251 through 1377—Clean Water Act.

21. 35 U.S.C. Sections 200 *et seq.*—Bayh-Dole Act (Patent Rights).

22. 40 U.S.C. Section 502(a)(3)—Federal Property and Administrative Services Act of 1949, as amended (General Services Administration (GSA) Schedule Use by the District of Columbia).

23. 40 U.S.C. Section 502(c)(1)(A)—Section 211 of the E-Government Act of 2002 (GSA Schedule Use for Information Technology).

24. 40 U.S.C. Section 502(c)(1)(B)—Section 2 of the Local Preparedness Acquisition Act (GSA Schedule Use for Safety or Security Emergency Preparedness) 40 U.S.C. Section 502(c)(1)(B)—Section 2 of the Local Preparedness Acquisition Act (GSA Schedule Use for Safety or Security Emergency Preparedness).

25. 40 U.S.C. Section 502(d)—Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (GSA Schedule Use for Major Disaster or Emergency Relief).

26. 40 U.S.C. Chapter 11—Architectural Engineering Procurement Requirements ("Brooks Act").

27. 40 U.S.C. Sections 3141 *et seq.*—Davis-Bacon Act (Prevailing Wages).

28. 40 U.S.C. Section 3145—Section 2 of the Copeland Anti-Kickback Act, as amended.

29. 40 U.S.C. Section 3701(b)(3)(A)(iii)—Section 4104(c) of the Federal Acquisition Streamlining Act of 1994) (Increased Wage and Hour Thresholds for Contract Work Hours and Safety Standards Act).

30. 40 U.S.C. Section 3702—Section 102 of the Contract Work Hours and Safety Standards Act (Wage and Hour Restrictions).

31. 40 U.S.C. Section 3704—Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety).

32. 41 U.S.C. Section 253m—(Two-Step Selection Procedures Process [for Federal Procurements]).

33. 41 U.S.C. Section 403(11)—Federal Acquisition Streamlining Act of 1994 (Definition of the [Federal] Simplified Acquisition Threshold).

34. 42 U.S.C. Sections 289 *et seq.*—National Research Act, as amended (Protection of Humans).

35. 42 U.S.C. Sections 2000d *et seq.*—Title VI of the Civil Rights Act of 1964, as amended (Nondiscrimination).

36. 42 U.S.C. Section 2000e *et seq.*—Title VII of the Civil Rights Act of 1964, as amended (Equal Employment Opportunity).

37. 42 U.S.C. Sections 4601 *et seq.*—Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

38. 42 U.S.C. Section 5150—Stafford Act (Major Disaster or Emergency Relief).

39. 42 U.S.C. Sections 6101 *et seq.*—Age Discrimination Act of 1975, as amended, (Nondiscrimination on the Basis of Age in Federal or Federal Assistance Programs).

40. 42 U.S.C. Sections 6321 *et seq.*—Subchapter III, Part B, Energy Policy and Conservation Act (State Energy Conservation Plans).

41. 42 U.S.C. Section 6962—Section 4002 of the Resource Conservation and Recovery Act of 1976, as amended (Recycled Materials).

42. 42 U.S.C. Sections 7401 through 7671q—Clean Air Act.

43. 42 U.S.C. Sections 7701 *et seq.*—Earthquake Hazards Reduction Act of 1977, as amended, (Seismic Safety).

44. 42 U.S.C. Sections 12101 *et seq.*—Americans with Disabilities Act of 1990, as amended (Accessibility for Persons with Disabilities).

45. 46 U.S.C. Section 55305—Cargo Preference Act (codified).

46. 48 U.S.C. Section 1469e—Use of GSA Supply Schedules by Insular Areas.

47. 49 U.S.C. Section 114(r)—Department of Transportation, Transportation Security Administration (Protection of Sensitive Security Information).

48. 49 U.S.C. Sections 303(b) and 303(c)—Department of Transportation (DOT) (Statutory protections for Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites).

49. 49 U.S.C. Section 40118—Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended ("Fly America" Act – Persons and Property).

50. 49 U.S.C. Section 40119(b)—(Protection of Sensitive Security Information).

51. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200.

52. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR Part 18 (Common Grant Rule for Governmental Recipients).

53. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 CFR Part 19 (Common Grant Rule for Non-governmental Recipients).

54. DOT regulations, "Protection of Human Subjects," 49 CFR Part 11.

55. DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15.

56. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20.

57. DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21.

58. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR Part 24.

59. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25.

60. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26, as amended by the "Disadvantaged Business Enterprise: Program Improvements" amendments thereto, 76 FR 5083 *et seq*. January 28, 2011.

61. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31.

62. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27.

63. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, including Appendix A, "DOT Modifications of ATBCB Standards for Accessible Transportation Facilities."

64. Joint Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

65. DOT regulations, "Seismic Safety," 49 CFR Part 41 at Sections 41.117 and 41.120.

66. Federal Transit Administration (FTA) regulations, "Charter Service," 49 CFR Part 604.

67. FTA regulations, "School Bus Operations," 49 CFR Part 605.

68. FTA regulations, "Capital Leases," 49 CFR Part 639.

69. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

70. FTA regulations, "Buy America," 49 CFR Part 661.

71. FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663.

72. FTA regulations, "Bus Testing," 49 CFR Part 665.

73. Joint Federal Highway Administration (FHWA)/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

74. Joint FHWA/FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 CFR Parts 771 and 774, and 49 CFR Part 622.

75. Federal Acquisition Regulation (FAR), 48 CFR Chapter 1.

76. FAR Subpart 6.3, 48 CFR Chapter 1, Subpart 6.3 (Federal Procurement by Noncompetitive Proposals).

77. FAR Subparts 25.1 and 25.2, 48 CFR Chapter 1, Subparts 25.1 and 25.2 (Federal Buy American Regulations).

78. FAR Part 31, 48 CFR Chapter 1, Part 31 (Federal Cost Principles).

79. FAR Subpart 31.2, 48 CFR Chapter 1, Subpart 31.2 (Contracts with Commercial Organizations).

80. Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

81. Department of Labor (DOL) regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 CFR Part 3.

82. DOL regulations "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5.

83. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215.

84. DOL regulations "Safety and Health Regulations for Construction," 29 CFR Part 1926.

85. Equal Employment Opportunity Commission regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625.

86. DOL regulations, "Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor," 41 CFR Chapter 60.

87. Department of Agriculture regulations, "Animal Welfare," 9 CFR Subchapter A, Parts 1, 2, 3, and 4.

88. Department of the Treasury regulations, "Surety Companies Doing Business with the United States," 31 CFR Part 223.

89. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194.

90. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms," 37 CFR Part 401.

91. Department of Commerce, "Export Administration Regulations," 15 CFR Parts 730 *et seq.*

92. Environmental Protection Agency (EPA) regulations, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR Part 247.

93. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85.

94. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86.

95. EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

96. Council on Environmental Quality regulations, "Other Requirements of NEPA," 40 CFR Part 1506.

97. Department of Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR Part 90.

98. General Services Administration (GSA), "Federal Property Management Regulations," 41 CFR Parts 101-42 through 101-46, and 101-48, 101-49.

99. GSA regulations, "Use of United States Flag Air Carriers," 41 CFR Sections 301-10.131 through 301-10.143.

100. Maritime Administration regulations, "Cargo Preference U.S. Flag Vessels," 46 CFR Part 381.

101. Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," October 13, 1967.

102. Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. Section 205a note.

103. Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. Section 4321 note.

104. Executive Order No. 13043, "Increasing Seat Belt Use in the United States," August 16, 1997, 23 U.S.C. Section 402 note.

105. Executive Order No.13132, "Federalism," August 4, 1999, 5 U.S.C. Section 601 note.

106. Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. Section 2000d-1 note.

107. Executive Order No. 13502, "Use of Project Labor Agreements for Federal Construction Projects," February 6, 2009, which rescinds Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001, 41 U.S.C. Section 251 note.

108. Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note.

109. Office of Management and Budget (OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180.

110. OMB Guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 CFR Part 220.

111. OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 CFR Part 225.

112. OMB Guidance for Grants and Agreements "Cost Principles for Non-Profit Organizations (OMB Circular A-122)," 2 CFR Part 230.

113. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," as revised.

114. GSA Order ADM 4800.2E, "Eligibility to Use GSA Sources of Supply and Services."

115. DOT Order 5610.2, "Department of Transportation (DOT) Order To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 FR 18377, April 15, 1997.

116. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009.

117. DOT, "Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons," December 14, 2005.

118. FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for FTA Recipients," 05-13-07.

119. FTA Circular 5010.1D, "Grant Management Requirements," 11-01-08.

120. FTA Circular 9030.1C, "Urbanized Area Formula Program Grant Application Instructions" 10-01-98.

121. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions" 11-01-08.

122. FTA Circular 9400.1A, "Federal Transit Administration Design and Art in Transit Projects," 06-09-95.

123. FTA, "Notice of Final Agency Guidance on the Eligibility of Joint Development Improvements under Federal Transit Law," 72 FR 5788, February 7, 2007.

124. FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 FR 1455 *et seq.*, January 8, 2001.

125. FTA, Master Agreement (PDF).

126. FTA, "Best Practices Procurement Manual"

127. FTA, "Pricing Guide for FTA Grantees."

128. Defense Contract Audit Agency Audit Manual

B. APPENDIX B

FTA REGIONAL AND METROPOLITAN OFFICE CONTACT INFORMATION

Office	Area Served	Contact Information
Region I	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	Transportation Systems Center Kendall Square 55 Broadway, Suite 920 Cambridge, MA 02142-1093 Phone: 617-494-2055 Fax: 617-494-2865
Region II	New York and New Jersey	One Bowling Green, Room 429 New York, NY 10004-1415 Phone: 212-668-2170 Fax: 212-668-2136
Region III	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	1760 Market Street, Suite 500 Philadelphia, PA 19103-4124 Phone: 215-656-7100 Fax: 215-656-7260
Region IV	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U.S. Virgin Islands	230 Peachtree St., N.W., Suite 800 Atlanta, GA 30303 Phone: 404-865-5600 Fax: 404-865-5605
Region V	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin	200 West Adams Street, Suite 320 Chicago, IL 60606 Phone: 312-353-2789 Fax: 312-886-0351
Region VI	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	819 Taylor Street, Room 8A36 Forth Worth, TX 76102 Phone: 817-978-0550 Fax: 817-978-0575
Region VII	Iowa, Kansas, Missouri, and Nebraska	901 Locust, Suite 404 Kansas City, MO 64106 Phone: 816-329-3920 Fax: 816-329-3921

Office	Area Served	Contact Information
Region VIII	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming	12300 W Dakota Avenue, Suite 310 Lakewood, CO 80228-2583 Phone: 720-963-3300 Fax: 720-963-3333
Region IX	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and the Northern Mariana Islands	201 Mission Street, Room 1650 San Francisco, CA 94105-1839 Phone: 415-744-3133 Fax: 415-744-2726
Region X	Alaska, Idaho, Oregon, and Washington	915 Second Avenue, Suite 3142 Seattle, WA 98174-1002 Phone: 206-220-7954 Fax: 206-220-7959
Lower Manhattan Recovery Office	Lower Manhattan	One Bowling Green, Room 436 New York, NY 10004 Phone: 212-668-1770 Fax: 212-668-2505
New York Metropolitan Office	New York Metropolitan Area	One Bowling Green, Room 428 New York, NY 10004-1415 Phone: 212-668-2201 Fax: 212-668-2136
Philadelphia Metropolitan Office	Philadelphia Metropolitan Area	1760 Market Street, Suite 510 Philadelphia PA 19103-4124 Telephone: 215-656-7070 Fax: 215-656-7269
Washington, DC Metropolitan Office	Washington, DC Metropolitan Area	1990 K Street NW, Suite 510 Washington, DC 20006-1178 Telephone: 202-219-3562/219-3565 Fax: 202-219-3545
Chicago Metropolitan Office	Chicago Metropolitan Area	200 West Adams Street, Suite 2410 Chicago, IL 60606 Telephone: 312-886-1616 Fax: 312-886-0351
Los Angeles Metropolitan Office	Los Angeles Metropolitan Area	888 S. Figueroa, Suite 1850 Los Angeles, CA 90012 Telephone: 213-202-3950 Fax: 213-202-3961

C. APPENDIX C

THIRD PARTY CONTRACTING CHECKLISTS

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THIRD PARTY CONTRACTING CHECKLISTS

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D. APPENDIX D

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER – MATRICES

A. THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding $2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
All FTA Assisted Third Party Contracts and Subcontracts		
No Federal Government Obligations to Third Parties (Use of Disclaimer)		§ 2.f
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 3.f
Access to Third Party Contract Records		§ 15.t
Changes to Federal Requirements		§ 2.c(1)
Civil Rights (Title VI, ADA, EEO (except special DOL construction clause))		§ 12
Disadvantaged Business Enterprises (DBEs)	Contract awarded on the basis of a bid/proposal offering to use DBEs.	§ 12.d
Incorporation of FTA Terms	Per FTA C 4220.1F.	§ 15.a
Awards Exceeding $10,000		
Terminations	If 49 CFR Part 18 applies.	§ 11 and § 15.a, which incorporate 49 CFR Part 18
Special EEO provision for construction contracts	If 49 CFR Part 18 or Part 19 indicate that the DOL EEOC regulations at 41 C.F.R. Chapter 60 apply.	§ 15.a, which incorporates 49 CFR Part 18 and Part 19
Awards Exceeding $25,000		
Debarment and Suspension		§ 3.b
Awards Exceeding the Simplified Acquisition Threshold ($100,000) (As of February 2011, OMB has not to date adopted the FAR clause 2.101 $150,000 standard for grants.)		
Buy America	When tangible property or construction will be acquired.	§ 14.a
Resolution of Disputes, Breaches, or Other Litigation		§ 56
Awards Exceeding $100,000 by Statute		
Lobbying	As of February 2011, the OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 $150,000 simplified acquisition threshold standard.	§ 3.d
Clean Air		§ 25.b
Clean Water		§ 25.c

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER — MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding $2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel.	§ 14.b
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations.	§ 14.c
Construction Activities		
Construction Employee Protections – Davis-Bacon Act	For contracts exceeding $2,000.	§ 24.a(1)
Construction Employee Protections – Contract Work Hours & Safety Standards Act	For contracts exceeding $100,000. As of February 2011, the OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 $150,000 simplified acquisition threshold standard.	§ 24.a(2)
Construction Employee Protections – Sec. 1 Copeland Anti-Kickback Act – Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding $2,000.	§ 24.a(3)
Bonding for Construction Activities Exceeding $100,000	5% bid guarantee bond. 100% performance bond. Payment bond equal to: – 50% for contracts < $1M. – 40% for contracts >$1M – < $5M. – $2.5M for contracts > $5M.	§ 15.o(1)
Seismic Safety	Construction contracts for new buildings or for existing buildings.	§ 23.e
Nonconstruction Activities		
Nonconstruction Employee Protection – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (except transportation services contracts and open market contracts) exceeding $100,000. As of February 2011, the OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 $150,000 simplified acquisition threshold standard.	§ 24.b
Transit Operations		
Transit Employee Protective Arrangements		§ 24.d
Charter Bus Operations		§ 28
School Bus Operations		§ 29
Drug Use and Testing	Safety sensitive functions.	§ 32.b
Alcohol Misuse and Testing	Safety sensitive functions.	§ 32.b

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding $2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
Planning, Research, Development, and Demonstration Projects		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
Special Notification Requirements for States		
Special Notification Requirement for States		§ 38
Miscellaneous Special Requirements		
Energy Conservation		§ 26
Recycled Products	Contracts when procuring $10,000 or more per year of items designated by EPA.	§ 15.k
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects.	§ 15.m
ADA Access	Contracts for rolling stock or facilities construction/renovation.	§ 12.g
Assignability Clause	Procurements through assignments.	§ 15.a, which incorporates 49 CFR Part18 and 49 CFR Part 19

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding $2,000)

TYPE OF PROCUREMENT					
PROVISION	**Professional Services/A&E**	**Operations/ Management**	**Rolling Stock Purchase**	**Construction**	**Materials & Supplies**
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>$10,000	All	All
Special DOL EEO clause for construction projects				>$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>$25,000	>$25,000	>$25,000	>$25,000	>$25,000
Buy America			>$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 $150,000 standard.	>$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 $150,000 standard.	>$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 $150,000 standard.
Resolution of Disputes, Breaches, or Other Litigation	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Lobbying	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Clean Air	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Clean Water	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding $2,000)

TYPE OF PROCUREMENT					
PROVISION	**Professional Services/A&E**	**Operations/ Management**	**Rolling Stock Purchase**	**Construction**	**Materials & Supplies**
Davis-Bacon Act				>$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>$100,000 (transportation services excepted).	>$100,000	>$100,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > $2,000 (also ferries).	
Bonding				$100,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items $10,000 or more annually.		EPA-selected items $10,000 or more annually.	EPA-selected items $10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

C. CERTIFICATIONS, REPORTS, AND FORMS

CERTIFICATIONS, REPORTS, AND FORMS	COMMENTS	REGULATORY REFERENCE
Bus Testing Certification	All procurements of new model transit buses and vans and existing models being modified with a major changevor changes.	49 CFR Part 665
TVM Certifications	All rolling stock procurements.	49 CFR Part 26
Buy America Certification	Procurements of steel, iron or manufactured products exceeding $100,000.	49 CFR Part 661
Preaward Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Preaward Buy America Certification	Rolling stock procurements exceeding procurements exceeding $100,000.	49 CFR Part 663
Preaward Purchaser's Requirement	All rolling stock procurements.	49 CFR Part 663
Post Delivery Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Post Delivery Buy America Certification	Rolling stock procurements exceeding procurements exceeding $100,000.	49 CFR Part 663
Post Delivery Purchaser's Requirement	All rolling stock procurementsto the extent required by Federal law and regeulations.	49 CFR Part 663
On-Site Inspector's Report	Rolling Stock except for procurements of: -10 or fewer vehicles; - 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer; - any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.	49 CFR Part 663
Federal Motor Vehicle Safety Standards Preaward Review and Post Delivery	Motor vehicle procurements (49 CFR 571).	49 CFR Part 663
Lobbying	Procurements exceeding $100,000.	49 CFR Part 20 As of February 2011, OMB Office of Federal Financial Management has not adopted FAR 2.101 $150,000 simplified acquisition threshold standard.
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding $100,000 where contractor engages in lobbying activities.	49 CFR Part 20 As of February 2011, OMB Office of Federal Financial Management has not adopted FAR 2.101 $150,000 simplified acquisition threshold standard.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

D. OTHER MATTERS

OTHER MATTERS	COMMENTS	STATUTORY OR REGULATORY REFERENCES
Contract Administration System		49 CFR § 18.36(b)(2) 49 CFR § 19.47
Record of Procurement History		49 CFR § 18.36(b)(9) 49 CFR § 19.47
Protest Procedures		49 CFR § 18.36(b)(12)
Selection Procedures		49 CFR § 18.36(c)(3)
Cost/Price Analysis		49 CFR § 18.36(f) 49 CFR § 19.45
Justification for Noncompetitive Awards	If Applicable.	49 CFR § 18.36(b)(9) by implication 49 CFR § 19.46(b)
No Excessive Bonding Requirements		49 CFR § 18.36(h) 49 CFR § 19.48(c)(5)
No Exclusionary Specifications		49 U.S.C. § 5325(h)
No Geographic Preferences	Except for A&E Services	49 CFR § 18.36(c)(2)

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Metra
The way to really fly

547 W Jackson Blvd Chicago Illinois 60661 (312) 322-6900 TTY#1-312-322-6774

Memorandum

DATE: March 28, 2012

TO: Procurement, Professional Services/Contracts and Materials Management Staff

FROM: Paul A. Kisielius, Senior Division Director
General Administration

SUBJECT: Procurement System Review Training – 2nd Session

I will be conducting the 2nd training session on selected deficient Elements that were identified during Metra's Procurement System Review ("PSR"). The 2nd session will be held Thursday, April 5th from 9:00 AM to 11:00 AM in the bid opening room. Those that receive this letter are expected to attend the mandatory training session. The PSR Elements that we will review on Thursday are Element numbers 6, 12, 13, 15, 16 and 18.

You have received a copy of the Procurement System Review Final Report dated July 21, 2011. The findings of deficiency start on page 22 and are in numerical order. Please read and be ready to discuss the respective deficiency for the Elements listed above. Prior to the training session each of you will receive the respective corrective action Metra is to institute for each deficient Element.

These sessions are intended to advance our knowledge of the FTA Circular and to correct our past procurement actions into acceptable and compliant procurement activities.

Metra
The way to really fly

547 W Jackson Blvd Chicago Illinois 60661 (312) 322-6900 TTY#1-312-322-6774

Memorandum

DATE: April 2, 2012

TO: Procurement, Professional Services/Contracts and Materials Management Staff

FROM: Paul A. Kisielius, Senior Division Director
General Administration

SUBJECT: Procurement System Review Training

Attached are the Metra responses and corrective action to the Elements (Element Numbers 6, 12, 13, 15, 16 and 18) that we will be reviewing Thursday at the training session. Please read and be ready to discuss the respective responses.

PROCUREMENT SYSTEM REVIEW TRAINING

Thursday, April 5, 2012

9:00 AM - 11:00 AM

MATERIALS MANAGEMENT BID OPENING ROOM

AGENDA

Elements to Review and Dicuss Corrective Actions:

9:00 AM – Session Starts

- **Element #6:** Procurement Policies and Procedures
- **Element #12:** Arbitrary Action
- **Element #13:** Brand Name Restrictions

Break – 10 minutes

- **Element #15:** Contract Term Limitations – Rolling Stock
- **Element #16:** Written Procurement Selection Procedures
- **Element #18:** Award to Responsible Contractors

Metra

Meeting Attendance

Subject: PSR Training - Review of Elements 6, 12, 13, 15, 16 & 18

Date 4/5/12 Time 9:00AM Location 11th Floor Bid Open Room

Name	Affiliation/Position	Phone No.	E-mail Address (if applicable)
Paul A. Kisielius	Metra	322-6666	Kisielin@metrarr.com
Celso Pamboa	METRA	322-6668	cpamboa@metrarr.com
Ann Marie Di Prima	Metra	322-6676	adiprima@metrarr
Brenda Resendez	Metra	6671	bresendez@metrarr.com
TOM STUEBNER	"	8017	TSTUEBNER@ "
DAVE DeYOUNG	METRA LAW	6688	ddeyoung@metrarr.com
Rick Capra	"	6996	rcapra
Urbano Damian	Metra	6662	udamian@metrarr.com
STEVEN VARGAS	"	6669	SVARGAS@METRARR.COM
Michael Darnell	Metra	6678	mdarnell@metrarr.com
ENLSE Johnson	Metra	6654	ejohnson@metrarr.com
Bob Rich	Metra	6674	rrich@metrarr.com
Jennifer Cellers	Metra	66663	jzellers@metrarr.com
Carolyn Capranica	Metra	6667	ccapranica@metrarr.com
Geoffrey Urban	Metra	6664	gurban@metrarr.com

2/02

Procurement Policies and Procedures (Element #6):

Metra's Revised Response: The PSR noted that a detailed review of Metra's procedures revealed that the areas listed below were not addressed. The PSR noted that these areas should be included in Metra's Policies and Procedures manual. For each item that was noted as missing in our procedures, we have indicated the item that was missing and attached the relevant revised proposed procedure:

- Requirements for the use of Time and Materials type contracts.
  See attached proposed revised procedure PU-02-RC.
- Tag-ons.
  See attached proposed revised procedure PU-10-RC.
- Prohibition on unreasonable requirements as qualification to bid.
  See attached proposed revised procedure PU-02-RC.
- Prohibition on arbitrary action.
  See attached proposed revised procedure PU-02-RC.
- Prohibition on geographic preference for A&E contracts.
  See attached proposed revised procedure PU-02-RC.
- Requirements for clear and accurate specifications.
  See attached proposed revised procedure PU-02-RC, PU-06-RC and PU-08-RC.
- Requirements applicable to micro-purchase.
  See attached proposed revised procedure PU-04-RC.
- Requirements applicable to small purchases.
  See attached proposed revised procedure PU-04-RC.
- Procurements of Design-Bid-Build.
  See attached proposed revised procedure PU-02-RC.
- Procurement of Design-Build.
  See attached proposed revised procedure PU-08-RC and PU-14-RC.
- Requirements to complete an independent cost estimate.
  See attached proposed revised procedure PU-05-RC, PU-06-RC, PU-08-RC and PU-14-RC.
- Grantee's cost principals.
  See attached proposed revised procedure PU-02-RC.
- Bonding requirements for construction contracts.
  See attached proposed revised procedure PU-02-RC and PU-14-RC.
- Advance payments.
  See attached proposed revised procedure PU-02-RC.
- Requirements for progress payments.
  See attached proposed revised procedure PU-02-RC.
- Requirements for liquidated damages.
  See attached proposed revised procedure PU-02-RC.
- Requirements for breach contract remedies.
  See attached proposed revised procedure PU-02-RC.

- Requirements for termination clauses.
  See attached proposed revised procedure PU-02-RC.
- Federal statutory and regulatory requirements for contracts funded under Federal grants.
  See attached proposed revised procedure PU-02-RC, PU-05-RC, PU-06-RC, PU-08-RC and PU-14-RC.
- Requirements for revenue contracts.
  See attached proposed revised procedure PU-02-RC.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

REQUISITIONING OF MATERIALS & SERVICES

Purchase Requisitions that are FTA funded, must adhere to all of the applicable requirements set forth in Circular 4220.1F (attached and incorporated herein as Exhibit I) as well as all applicable Metra procurement procedures, business regulations, and other rules and regulations. Circular 4220.1F applies to each FTA recipient of Federal assistance when it uses FTA assistance for third party contracts. FTA funded procurements require project costs to conform to applicable Federal cost principals for allowable costs. Cost must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulations, and must comply with Federal cost principles applicable to Metra. Metra prohibits geographic preferences, except in those cases where applicable Federal statues expressly mandate or encourage geographic preference. Metra also prohibits the cost plus a percentage of cost and percentage of construction cost methods of contracting. Time and Materials type contracts are restricted. They can only be used when it has been determined that no other contract type is suitable; and if the contract specifies a ceiling price that the contractor may not exceed except at its own risk. Metra also prohibits excessive qualifications, unnecessary experience requirements, improper prequalification, retainer contracts, arbitrary action, excessive bonding, and brand name only. If there is a liquidated damages provision in a proposed contract, any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise. When progress payments are utilized the solicitation documents must indicate that Metra will receive title to property (materials, work in progress, and finished goods). Advance Payments are prohibited to a third party contractor before the contractor has incurred the cost for which the payments would be attributable. However, the FTA does occasionally make exceptions to the prohibitions if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence.

FTA funded third party contracts exceeding $100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor. Termination for cause and termination for convenience provisions must be included in contracts exceeding $10,000.

Design-Bid-Build procurement method requires separate contracts for design services and for construction. The design services will follow PU-08-RC and the construction services will follow PU-14-RC.

Options may be included in a contract, provided however that Metra shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. If options are used, the option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a Sole Source procurement for purposes of this procedure. In exercising an option, Metra must ensure that the exercise of an option is in accordance with the terms and

CHANGE ORDERS

I. PURPOSE

This procedure contains policies and guidelines for altering: 1) the terms and/or conditions of a construction contract or professional services contract; 2) the dollar amount of an operations purchase order over $500.00, a professional services contract, and/or a construction contract; and 3) the dollar amount of a capital purchase order of any value.

II. POLICY

Federal assistance can not be used when a significant change in contract work (property or services) 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 sometimes referred to as "tag-ons."

Changes in the dollar value of a contract or purchase order will be made in accordance with instructions set forth in this procedure and will be authorized as outlined in FI-02-RC for the appropriate dollar amounts. All Change Order Requests and support information should be initiated by the appropriate Director and/or Department Head using the Purchase Order/Contract Modification Worksheet (Exhibit I).

The Change Order Request Form (Exhibit II) will be used for contract change orders only. For purchase orders, a Change Order must be submitted on a Purchase Requisition (RC 73) (See Exhibit I in PU-02-RC, Requisitioning of Materials and Services).

Undocumented and oral changes to contracts or purchase orders are prohibited. Change Orders must be issued prior to work being done or additional material purchased; except in instances where time delays in work activities appear unacceptable and/or will result in increased costs. In the instances when a Change Order cannot be processed before the additional work is started, a Purchase Order/Contract Modification (CM) will be issued. The use of a CM allows the expiration date of a contract or purchase order to be extended, and acknowledges the contractor's estimate of its price to perform the additional work, subject to written approval by Metra's Executive Director, without waiving any rights Metra may have in conjunction with processing the Change Order.

The Executive Director, or his designee, will notify the Board of Directors of approved Change Orders that increase the amount of the contract by $10,000.00 or greater at the regular board meeting following the final approval of the Change Order.

With respect to operating (as opposed to capital) purchase orders, over-shipments costing under $500.00 should be verified by the buyer and accepted/paid without the formal

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- Prepare a Purchase Requisition(s) for needed Materials and/or Services which are not otherwise already available in accordance with the policy and procedures specified herein. Descriptions/specifications for materials or services should be well defined, but non restrictive and they should be complete, clear, accurate, and unambiguous descriptions. If specifying a "brand name" product the solicitation must allow for offers of "an equal" product, and allowing "an equal" product listing the salient characteristics that the "equal" product must meet to be acceptable for award. Such "approved equal" determination shall be done as part of the Using Department's technical evaluation. If requesting both inventory and non-inventory Materials, prepare a Purchase Requisition for inventory Materials and a separate Purchase Requisition for non-inventory Materials.
- Assign the proper user department account/distribution code(s) to the Materials and/or Services requested in the Purchase Requisition(s).
- Determine, consistent with past practice and subject to approval by Materials Management Department, whether Bidder(s) are to be selected solely on the basis of price, or whether other factors should be considered.
- If requesting Materials and/or Services from a Sole Source, provide memorandum explaining the reason(s) for such Sole Source restriction.
- If requesting Materials and/or Services pursuant to an Emergency Requisition, provide memorandum and supporting evidence fully justifying the requested Materials and/or Services and the urgency for such Materials and/or Services.

Budget Authority

- Review accuracy and completeness of Purchase Requisition, including required signatures, identification of proper account/distribution code(s), and attachment of memorandums and supporting evidence, as applicable. Return Purchase Requisition to Requisitioner/User which are incomplete, incorrect, or reflect improper account/distribution code(s) for correction and resubmission.
- Verify availability of funds in the appropriate budget account. Return Purchase Requisition to Requisitioner/User for which funds are not available.
- Assuming funds are available and Purchase Requisition is complete, approve Purchase Requisition and forward approved Purchase Requisitions to Materials Management Department.
- Maintain a record of all Purchase Requisitions and purchases of Materials and Services to ensure that budget limitations are not exceeded.

Materials Management Department

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Materials Management Department

personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of a Professional Service Contract will be described in the respective Request for Proposals ("RFP") prepared by the Requisitioner/User. Services which are A & E services according to the Brooks Act, even though performed by a non-A & E firm, shall be considered A & E services. (See PU-08-RC).

Each RFP will be submitted by the Requisitioner/User to the Professional Services/ Contracts Division, together with a list of the specific Evaluation Criteria for the subject project, a statement of work that clearly, accurately and unambiguously describes the technical requirements for the service(s) to be procured, an independent Cost Estimate prepared by the Requisitioner/User to establish a base cost for budgetary purposes, and all other cost and non-cost related considerations the Requisitioner/User deems relevant for the award of a Professional Service Contract. The initial RFP prepared by the Requisitioner/User will be reviewed by the Professional Services/ Contracts Division who, after such review and in concert with the Requisitioner/User, will prepare the formal RFP. The formal RFP will be used by the Professional Services/ Contracts Division for the solicitation of proposals from Offerors.

Proposals with respect to a given RFP will be solicited through the use of advertisement in a newspaper of general circulation, e-mail notification to Offerors selected from Metra's vendor database, and posting on Metra's web site. The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, may coordinate the scheduling of a pre-proposal conference to clarify requirements and answer questions from potential Offerors. Attendance at such pre-proposal conference however, by potential Offeror(s) is not mandatory and absence at such a conference will not be used to treat an Offeror as non-responsive.

The evaluation of the proposals received with respect to a given RFP will be performed by the respective Evaluation Committee. Proposals with respect to an RFP will be first received by the Professional Services/ Contracts Division and first opened, in the presence of a witness, on the respective proposal due date. The Professional Services/ Contracts Division will perform an initial review and complete a Responsibility Determination Form with respect to each proposal. Any potential Offeror which does not demonstrate that they are a responsive Offeror necessary to assure achievement of the RFP objectives may be eliminated from further consideration. Proposals accepted by the Professional Services/

personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of an Architectural & Engineering (A & E) services contract will be described in the respective Request for Proposals ("RFP") prepared by the Requisitioner/User. Services which are not A & E services according to the Brooks Act, even though performed by an A & E firm, shall be considered professional services. (See PU-06-RC or PU-07-RC).

Each RFP will be submitted by the Requisitioner/User to the Professional Services/ Contracts Division, together with a list of the specific Evaluation Criteria for the subject project, a statement of work that is clear and an accurate description of the technical requirements for the service(s) to be procured, and an independent Cost Estimate prepared by the Requisitioner/User to establish a base cost for budgetary purposes that is to incorporate and document an analysis as partial elements to rationalize the amount of the contract; foreseeable requirements, past and current usage, and possible procurement methods. The initial RFP prepared by the Requisitioner/User will be reviewed by the Professional Services/ Contracts Division who, after such review and in concert with the Requisitioner/User, will prepare the formal RFP. A list of criteria with their order of importance will be included in the RFP. No dollar value of any project will be directly or indirectly solicited in the formal RFP. The formal RFP will be used by the Professional Services/ Contracts Division for the solicitation of proposals from Offerors. The solicitation documents must also include as an Exhibit the Federal Transit Administration required contract clauses.

Proposals with respect to a given RFP will be solicited through the use of advertisement in a newspaper of general circulation, e-mail notification to Offerors selected from Metra's vendor database, and posting on Metra's web site. The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, may coordinate the scheduling of a pre-proposal conference to clarify requirements and answer questions from potential Offerors. Attendance at such pre-proposal conference however, by potential Offeror(s) is not mandatory and absence at such a conference will not be used to treat an Offeror as non-responsive.

The evaluation of the proposals received with respect to a given RFP will be performed by the respective Evaluation Committee. Proposals with respect to an RFP will be first

INFORMAL QUOTATIONS AND AWARD

I. PURPOSE

This procedure provides instructions for the solicitation and award of bids for purchases of materials and services where the estimated cost is less than $10,000.00.

II. POLICY

This procedure is applicable to all purchases under $10,000.00, except as provided for in:

- Direct Purchases, PU-13-RC, or
- Blanket Purchase Orders and Release Notices, PU-09-RC, or
- Procurement Card Purchases, PU-21-RC, or
- Exceptions to Competitive Bidding as stated in Commuter Rail Board Ordinance, 94-1, or the most current document.

Purchases that amount of $10,000.00 or more are described in Formal Quotation and Awards, PU-05-RC.

Whenever possible and practical, METRA will endeavor to secure three or more bids (quotations) in the open market. If less than three bids are obtained, the reasons should be documented.

When a sole source is specified, a written memorandum explaining that the vendor is the only source for the materials and/or services must be provided. The memorandum must be signed by the Director of the Requisitioning Department or Division, the Senior Director, as appropriate, and the Deputy Executive Director.

Bid quotations as specified herein, may be obtained by telephone, fax, or electronic document. The solicitation documents must also include as an Exhibit the Federal Transit Administration required contract clauses. When specifications cannot be clearly defined or bids cannot efficiently procured by telephone, written bids will be necessary.

For purchase orders that include capital funds, a price/cost analysis and history of procurement must be prepared and maintained on file if a single bid or sole source. Metra's policy and procedures for Informal Quotations is a tighter restriction than what is required to meet the Small Purchases requirements under FTA Circular 4220.1F and it also meets the requirements as set forth for Micro-Purchases under FTA Circular 4220.1F.

Multiple awards under $10,000.00 for the same materials and services in order to avoid the prescribed procedure for formal quotations and awards (PU-05-RC) are prohibited.

Departments should endeavor to accurately forecast their supply needs in order to avoid the need to frequently re-bid a contract.

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Purchases that amount of $10,000.00 or more are described in Formal Quotation and Awards, PU-05-RC.

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Multiple awards under $10,000.00 for the same materials and services in order to avoid the prescribed procedure for formal quotations and awards (PU-05-RC) are prohibited.

Departments should endeavor to accurately forecast their supply needs in order to avoid the need to frequently re-bid a contract.

Purchase Requisitions that are FTA funded, must adhere to all of the applicable requirements set forth in Circular 4220.1F (attached and incorporated herein as Exhibit I) as well as all applicable Metra procurement procedures, business regulations, and other rules and regulations. Circular 4220.1F applies to each FTA recipient of Federal assistance when it uses FTA assistance for third party contracts. FTA funded procurements require project costs to conform to applicable Federal cost principals for allowable costs. Cost must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulations, and must comply with Federal cost principles applicable to Metra. Metra prohibits geographic preferences, except in those cases where applicable Federal statues expressly mandate or encourage geographic preference. Metra also prohibits the cost plus a percentage of cost and percentage of construction cost methods of contracting. Time and Materials type contracts are restricted. They can only be used when it has been determined that no other contract type is suitable; and if the contract specifies a ceiling price that the contractor may not exceed except at its own risk. Metra also prohibits excessive qualifications, unnecessary experience requirements, improper prequalification, retainer contracts, arbitrary action, excessive bonding, and brand name only. If there is a liquidated damages provision in a proposed contract, any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise. When progress payments are utilized the solicitation documents must indicate that Metra will receive title to property (materials, work in progress, and finished goods). Advance Payments are prohibited to a third party contractor before the contractor has incurred the cost for which the payments would be attributable. However, the FTA does occasionally make exceptions to the prohibitions if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence.

FTA funded third party contracts exceeding $100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor. Termination for cause and termination for convenience provisions must be included in contracts exceeding $10,000.

Design-Bid-Build procurement method requires separate contracts for design services and for construction. The design services will follow PU-08-RC and the construction services will follow PU-14-RC.

Options may be included in a contract, provided however that Metra shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. If options are used, the option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a Sole Source procurement for purposes of this procedure. In exercising an option, Metra must ensure that the exercise of an option is in accordance with the terms and

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating contracts for A & E services by Metra, regardless of the funding mechanism. The services being solicited are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property.

II. POLICY:

GENERAL:

A & E services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. However, Circular 4220.1F applies to each FTA recipient of Federal assistance when it uses FTA assistance for third party contracts. The Brooks procurement method is based on the award of contracts for services such as A & E services (the nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualification-based procurement procedures may be used) using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, each Offeror's qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation. Metra does not utilize Design-Build type contracts.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria. Negotiate the offer/contract with the highest ranked Offeror. In the event Professional Services/ Contracts Division is unable to reach an agreement with such Offeror, terminate negotiations with such Offeror and enter into negotiations with the next highest ranking Offeror (and so on).

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra

FORMAL SOLICITATION AND AWARD FOR CONSTRUCTION CONTRACTS

Solicitation for bids from contractors will be made by media advertisements for Invitation for Bids. (See Exhibit II in PU-04-RC, Informal Quotations and Awards)

Only bids received by the announced due date and time will be considered.

Construction contracts will be awarded to the lowest, responsive and responsible bidder. Bonding is required for all construction contracts exceeding the simplified acquisition threshold unless the FTA determines that other arrangements adequately protect the Federal interest.

Metra does not utilize Design-Build type contracts.

III. DEFINITIONS

Requisition: See Glossary

Sole Source: See Glossary

IV. RESPONSIBILITIES

Requisitioner/User
Submits requisition(s) and provides adequate specifications for items desired in accordance with Requisitioning of Materials and Services, PU-02-RC. Prepares memorandum justifying sole source requirements, signed by the Director of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director, as appropriate, and the Executive Director. Assists Procurement Division or Professional Services/Contracts Division in providing specifications and clarifying specifications, as required. Reviews bidders to verify their ability to meet technical specifications. Prepares independent cost estimate as required that is to incorporate and document an analysis as partial elements to rationalize the amount of the contract; foreseeable requirements, past and current usage, and possible procurement methods.

Budget Authority
Verifies availability of funds in the appropriate budget account. Reviews signatures and completeness of forms. The Department Head, Director, Section Chief, or other similarly designated person signs approval in box #25 on requisition after checking budget. Maintains a record of all requisitions and purchases to ensure that budget limitations are not exceeded. Verifies proper Account/Distribution codes.

Professional Services/Contracts Division
Determines the method of obtaining quotations. Solicits quotations and selects the lowest responsive and responsible bidder. Where possible, solicits bids to secure a minimum of

FORMAL QUOTATIONS AND AWARD

I. PURPOSE

This procedure provides instructions for the solicitation and award of bids for purchases of materials and services, where the estimated cost is $10,000.00 or more.

II. POLICY

This procedure will be used when the acquisition of materials or services will equal or exceed $10,000.00, unless specifically exempted. See Purchasing Exemptions (Exhibit I).

Acquisitions under $10,000.00 may be made utilizing Informal Quotations and Award PU-04-RC. If less than $500.00, use Direct Purchases, PU-13-RC, or Procurement Card Purchases, PU-21-RC.

For the acquisition of professional services, see the appropriate procedure, PU-06-RC, PU-07-RC or PU-08-RC.

The bid solicitation process will contain procedures for including Disadvantaged Business Enterprises on bidders' list for the commodity or service being purchased, where appropriate.

Whenever possible and practical, Metra will endeavor to secure three or more bids (quotations) in the open market. If less than two bids are obtained, the reasons should be documented. When a specific, brand name or vendor is specified, a written memorandum explaining the reasons for the restriction must be provided. The memorandum must be signed by the manager of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director, as appropriate, and the Executive Director.

Circular 4220.1F applies to each FTA recipient of Federal assistance when it uses FTA assistance for third party contracts. Purchase orders that include capital funds, a price/cost analysis and history of procurement must be prepared and maintained on file for a single bid or sole source procurement. The solicitation documents must also include as an Exhibit the Federal Transit Administration required contract clauses. Upon receiving a single bid or proposal in response to a solicitation, it should be determined if competition was adequate. This should include a review of the specifications for undue restrictiveness and will include a canvas of potential sources that chose not to submit a bid or proposal. A determination is to be made to either re-solicit or continue with the award based upon the information obtained in the review. The canvas conducted by Materials Management is to be maintained in the contract file.

A sole source must be the only available vendor that can provide the materials or services. If capital funding is involved, approval of a sole source may be required.

Only bids received by the announced due date and time will be considered.

II. POLICY (Continued)

Solicitation for bids among vendors will be made by media advertisements, (Invitation for Bids/Requests for Proposals). See Exhibit II in PU-04-RC, for Informal Quotations and Awards), and Metra's corporate website.

Purchase orders will be awarded to the lowest responsive and responsible bidder.

III. DEFINITIONS

Blue Folder: See Glossary

Requisition: See Glossary

Sole Source: See Glossary

IV. RESPONSIBILITIES

Requisitioner/User
Submits requisition(s) and provides adequate specifications for items desired in accordance with Requisitioning of Materials and Services, PU-02-RC. Prepares memorandum justifying sole source requirements, signed by the Director of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director as appropriate, and the Executive Director. Assists Procurement Division or Professional Services/Contracts Division in providing specifications and clarifying specifications, as required. Reviews bidders to verify their ability to meet technical specifications. Prepares independent cost estimate as required to establish a base cost that is to incorporate and document an analysis as partial elements to rationalize the amount of the contract; foreseeable requirements, past and current usage, and possible procurement methods that are relevant for the award of a Contract.

Budget Authority
Verifies availability of funds in the appropriate budget account. Review signatures and completeness of forms. Department Head, Director, or other similarly designated person signs approval in box #25 on requisition after checking budget. Maintains a record of all requisitions and purchases to ensure that budget limitations are not exceeded. Verifies proper account/distribution codes.

Procurement Division or Professional Services/Contracts Division

PROFESSIONAL SERVICE CONTRACTS (GRANT-FUNDED, NON-BROOKS)

I. PURPOSE

This procedure sets forth policies and instructions for the acquisition, administration, and termination of professional service contracts and blanket professional service contracts (hereafter, collectively referred to as "Professional Service Contract(s)" unless otherwise stated) by Metra, which are funded by federal, state, or local grants and which do not involve Architectural and Engineering services (NOTE: See PU-07-RC for Professional Service Contracts that are not funded by capital funds, and PU-08-RC for Architectural and Engineering Service Contracts).

II. POLICY:

GENERAL:

Professional Service Contracts are exempt from competitive bidding pursuant to MET Ordinance 94-18 or NIRC Ordinance 94-1, but must follow grant requirements for the applicable competitive negotiations process. Professional Service Contracts using capital funds must be publicly advertised and competitively negotiated procurements in accordance with FTA guidelines. Proposals will be solicited in a newspaper with general circulation, and specific firms from lists of eligible vendors will be solicited, in order to reach an adequate number of professional firms. The solicitation and contract documents should follow FTA Circular 4220.1F and the Procurement Regulations. Circular 4220.1F applies to each FTA recipient of Federal assistance when it uses FTA assistance for third party contracts. The solicitation documents must also include as an Exhibit the Federal Transit Administration required contract clauses.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria.

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra

distributed to persons not relevant to the project and not within reporting hierarchies at Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of a Professional Service Contract will be described in the respective Request for Proposals ("RFP") prepared by the Requisitioner/User. Services which are A & E services according to the Brooks Act, even though performed by a non-A & E firm, shall be considered A & E services. (See PU-08-RC).

Each RFP will be submitted by the Requisitioner/User to the Professional Services/ Contracts Division, together with a list of the specific Evaluation Criteria for the subject project, a statement of work that clearly, accurately and unambiguously describes the technical requirements for the service(s) to be procured, an independent Cost Estimate prepared by the Requisitioner/User to establish a base cost for budgetary purposes, and all other cost and non-cost related considerations the Requisitioner/User deems relevant for the award of a Professional Service Contract. The initial RFP prepared by the Requisitioner/User will be reviewed by the Professional Services/ Contracts Division who, after such review and in concert with the Requisitioner/User, will prepare the formal RFP. The formal RFP will be used by the Professional Services/ Contracts Division for the solicitation of proposals from Offerors.

Proposals with respect to a given RFP will be solicited through the use of advertisement in a newspaper of general circulation, e-mail notification to Offerors selected from Metra's vendor database, and posting on Metra's web site. The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, may coordinate the scheduling of a pre-proposal conference to clarify requirements and answer questions from potential Offerors. Attendance at such pre-proposal conference however, by potential Offeror(s) is not mandatory and absence at such a conference will not be used to treat an Offeror as non-responsive.

The evaluation of the proposals received with respect to a given RFP will be performed by the respective Evaluation Committee. Proposals with respect to an RFP will be first received by the Professional Services/ Contracts Division and first opened, in the presence of a witness, on the respective proposal due date. The Professional Services/ Contracts Division will perform an initial review and complete a Responsibility Determination Form with respect to each proposal. Any potential Offeror which does not demonstrate that they are a responsive Offeror necessary to assure achievement of the RFP objectives may be eliminated from further consideration. Proposals accepted by the Professional Services/ Contracts Division for consideration will be forwarded to the Evaluation Committee for review.

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating contracts for A & E services by Metra, regardless of the funding mechanism. The services being solicited are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property.

II. POLICY:

GENERAL:

A & E services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. However, Circular 4220.1F applies to each FTA recipient of Federal assistance when it uses FTA assistance for third party contracts. The Brooks procurement method is based on the award of contracts for services such as A & E services (the nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualification-based procurement procedures may be used) using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, each Offeror's qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation. Metra does not utilize Design-Build type contracts.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria. Negotiate the offer/contract with the highest ranked Offeror. In the event Professional Services/ Contracts Division is unable to reach an agreement with such Offeror, terminate negotiations with such Offeror and enter into negotiations with the next highest ranking Offeror (and so on).

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra

personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of an Architectural & Engineering (A & E) services contract will be described in the respective Request for Proposals ("RFP") prepared by the Requisitioner/User. Services which are not A & E services according to the Brooks Act, even though performed by an A & E firm, shall be considered professional services. (See PU-06-RC or PU-07-RC).

Each RFP will be submitted by the Requisitioner/User to the Professional Services/ Contracts Division, together with a list of the specific Evaluation Criteria for the subject project, a statement of work that is clear and an accurate description of the technical requirements for the service(s) to be procured, and an independent Cost Estimate prepared by the Requisitioner/User to establish a base cost for budgetary purposes that is to incorporate and document an analysis as partial elements to rationalize the amount of the contract; foreseeable requirements, past and current usage, and possible procurement methods. The initial RFP prepared by the Requisitioner/User will be reviewed by the Professional Services/ Contracts Division who, after such review and in concert with the Requisitioner/User, will prepare the formal RFP. A list of criteria with their order of importance will be included in the RFP. No dollar value of any project will be directly or indirectly solicited in the formal RFP. The formal RFP will be used by the Professional Services/ Contracts Division for the solicitation of proposals from Offerors. The solicitation documents must also include as an Exhibit the Federal Transit Administration required contract clauses.

Proposals with respect to a given RFP will be solicited through the use of advertisement in a newspaper of general circulation, e-mail notification to Offerors selected from Metra's vendor database, and posting on Metra's web site. The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, may coordinate the scheduling of a pre-proposal conference to clarify requirements and answer questions from potential Offerors. Attendance at such pre-proposal conference however, by potential Offeror(s) is not mandatory and absence at such a conference will not be used to treat an Offeror as non-responsive.

The evaluation of the proposals received with respect to a given RFP will be performed by the respective Evaluation Committee. Proposals with respect to an RFP will be first

FORMAL SOLICITATION AND AWARD FOR CONSTRUCTION CONTRACTS

Solicitation for bids from contractors will be made by media advertisements for Invitation for Bids. (See Exhibit II in PU-04-RC, Informal Quotations and Awards)

Only bids received by the announced due date and time will be considered.

Construction contracts will be awarded to the lowest, responsive and responsible bidder. Bonding is required for all construction contracts exceeding the simplified acquisition threshold unless the FTA determines that other arrangements adequately protect the Federal interest.

Metra does not utilize Design-Build type contracts.

III. DEFINITIONS

Requisition: See Glossary

Sole Source: See Glossary

IV. RESPONSIBILITIES

Requisitioner/User
Submits requisition(s) and provides adequate specifications for items desired in accordance with Requisitioning of Materials and Services, PU-02-RC. Prepares memorandum justifying sole source requirements, signed by the Director of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director, as appropriate, and the Executive Director. Assists Procurement Division or Professional Services/Contracts Division in providing specifications and clarifying specifications, as required. Reviews bidders to verify their ability to meet technical specifications. Prepares independent cost estimate as required that is to incorporate and document an analysis as partial elements to rationalize the amount of the contract; foreseeable requirements, past and current usage, and possible procurement methods.

Budget Authority
Verifies availability of funds in the appropriate budget account. Reviews signatures and completeness of forms. The Department Head, Director, Section Chief, or other similarly designated person signs approval in box #25 on requisition after checking budget. Maintains a record of all requisitions and purchases to ensure that budget limitations are not exceeded. Verifies proper Account/Distribution codes.

Professional Services/Contracts Division
Determines the method of obtaining quotations. Solicits quotations and selects the lowest responsive and responsible bidder. Where possible, solicits bids to secure a minimum of

REQUISITIONING OF MATERIALS & SERVICES

Purchase Requisitions that are FTA funded, must adhere to all of the applicable requirements set forth in Circular 4220.1F (attached and incorporated herein as Exhibit I) as well as all applicable Metra procurement procedures, business regulations, and other rules and regulations. Circular 4220.1F applies to each FTA recipient of Federal assistance when it uses FTA assistance for third party contracts. FTA funded procurements require project costs to conform to applicable Federal cost principals for allowable costs. Cost must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulations, and must comply with Federal cost principles applicable to Metra. Metra prohibits geographic preferences, except in those cases where applicable Federal statues expressly mandate or encourage geographic preference. Metra also prohibits the cost plus a percentage of cost and percentage of construction cost methods of contracting. Time and Materials type contracts are restricted. They can only be used when it has been determined that no other contract type is suitable; and if the contract specifies a ceiling price that the contractor may not exceed except at its own risk. Metra also prohibits excessive qualifications, unnecessary experience requirements, improper prequalification, retainer contracts, arbitrary action, excessive bonding, and brand name only. If there is a liquidated damages provision in a proposed contract, any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise. When progress payments are utilized the solicitation documents must indicate that Metra will receive title to property (materials, work in progress, and finished goods). Advance Payments are prohibited to a third party contractor before the contractor has incurred the cost for which the payments would be attributable. However, the FTA does occasionally make exceptions to the prohibitions if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence.

FTA funded third party contracts exceeding $100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor. Termination for cause and termination for convenience provisions must be included in contracts exceeding $10,000.

Design-Bid-Build procurement method requires separate contracts for design services and for construction. The design services will follow PU-08-RC and the construction services will follow PU-14-RC.

Options may be included in a contract, provided however that Metra shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. If options are used, the option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a Sole Source procurement for purposes of this procedure. In exercising an option, Metra must ensure that the exercise of an option is in accordance with the terms and

REQUISITIONING OF MATERIALS & SERVICES

Purchase Requisitions that are FTA funded, must adhere to all of the applicable requirements set forth in Circular 4220.1F (attached and incorporated herein as Exhibit I) as well as all applicable Metra procurement procedures, business regulations, and other rules and regulations. Circular 4220.1F applies to each FTA recipient of Federal assistance when it uses FTA assistance for third party contracts. FTA funded procurements require project costs to conform to applicable Federal cost principals for allowable costs. Cost must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulations, and must comply with Federal cost principles applicable to Metra. Metra prohibits geographic preferences, except in those cases where applicable Federal statues expressly mandate or encourage geographic preference. Metra also prohibits the cost plus a percentage of cost and percentage of construction cost methods of contracting. Time and Materials type contracts are restricted. They can only be used when it has been determined that no other contract type is suitable; and if the contract specifies a ceiling price that the contractor may not exceed except at its own risk. Metra also prohibits excessive qualifications, unnecessary experience requirements, improper prequalification, retainer contracts, arbitrary action, excessive bonding, and brand name only. If there is a liquidated damages provision in a proposed contract, any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise. When progress payments are utilized the solicitation documents must indicate that Metra will receive title to property (materials, work in progress, and finished goods). Advance Payments are prohibited to a third party contractor before the contractor has incurred the cost for which the payments would be attributable. However, the FTA does occasionally make exceptions to the prohibitions if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence.

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FORMAL SOLICITATION AND AWARD FOR CONSTRUCTION CONTRACTS

Solicitation for bids from contractors will be made by media advertisements for Invitation for Bids. (See Exhibit II in PU-04-RC, Informal Quotations and Awards)

Only bids received by the announced due date and time will be considered.

Construction contracts will be awarded to the lowest, responsive and responsible bidder. Bonding is required for all construction contracts exceeding the simplified acquisition threshold unless the FTA determines that other arrangements adequately protect the Federal interest.

Metra does not utilize Design-Build type contracts.

III. DEFINITIONS

Requisition: See Glossary

Sole Source: See Glossary

IV. RESPONSIBILITIES

Requisitioner/User
Submits requisition(s) and provides adequate specifications for items desired in accordance with Requisitioning of Materials and Services, PU-02-RC. Prepares memorandum justifying sole source requirements, signed by the Director of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director, as appropriate, and the Executive Director. Assists Procurement Division or Professional Services/Contracts Division in providing specifications and clarifying specifications, as required. Reviews bidders to verify their ability to meet technical specifications. Prepares independent cost estimate as required that is to incorporate and document an analysis as partial elements to rationalize the amount of the contract; foreseeable requirements, past and current usage, and possible procurement methods.

Budget Authority
Verifies availability of funds in the appropriate budget account. Reviews signatures and completeness of forms. The Department Head, Director, Section Chief, or other similarly designated person signs approval in box #25 on requisition after checking budget. Maintains a record of all requisitions and purchases to ensure that budget limitations are not exceeded. Verifies proper Account/Distribution codes.

Professional Services/Contracts Division
Determines the method of obtaining quotations. Solicits quotations and selects the lowest responsive and responsible bidder. Where possible, solicits bids to secure a minimum of

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FTA funded third party contracts exceeding $100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor. Termination for cause and termination for convenience provisions must be included in contracts exceeding $10,000.

Design-Bid-Build procurement method requires separate contracts for design services and for construction. The design services will follow PU-08-RC and the construction services will follow PU-14-RC.

Options may be included in a contract, provided however that Metra shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. If options are used, the option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a Sole Source procurement for purposes of this procedure. In exercising an option, Metra must ensure that the exercise of an option is in accordance with the terms and

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FORMAL QUOTATIONS AND AWARD

I. PURPOSE

This procedure provides instructions for the solicitation and award of bids for purchases of materials and services, where the estimated cost is $10,000.00 or more.

II. POLICY

This procedure will be used when the acquisition of materials or services will equal or exceed $10,000.00, unless specifically exempted. See Purchasing Exemptions (Exhibit I).

Acquisitions under $10,000.00 may be made utilizing Informal Quotations and Award PU-04-RC. If less than $500.00, use Direct Purchases, PU-13-RC, or Procurement Card Purchases, PU-21-RC.

For the acquisition of professional services, see the appropriate procedure, PU-06-RC, PU-07-RC or PU-08-RC.

The bid solicitation process will contain procedures for including Disadvantaged Business Enterprises on bidders' list for the commodity or service being purchased, where appropriate.

Whenever possible and practical, Metra will endeavor to secure three or more bids (quotations) in the open market. If less than two bids are obtained, the reasons should be documented. When a specific, brand name or vendor is specified, a written memorandum explaining the reasons for the restriction must be provided. The memorandum must be signed by the manager of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director, as appropriate, and the Executive Director.

Circular 4220.1F applies to each FTA recipient of Federal assistance when it uses FTA assistance for third party contracts. Purchase orders that include capital funds, a price/cost analysis and history of procurement must be prepared and maintained on file for a single bid or sole source procurement. The solicitation documents must also include as an Exhibit the Federal Transit Administration required contract clauses. Upon receiving a single bid or proposal in response to a solicitation, it should be determined if competition was adequate. This should include a review of the specifications for undue restrictiveness and will include a canvas of potential sources that chose not to submit a bid or proposal. A determination is to be made to either re-solicit or continue with the award based upon the information obtained in the review. The canvas conducted by Materials Management is to be maintained in the contract file.

A sole source must be the only available vendor that can provide the materials or services. If capital funding is involved, approval of a sole source may be required.

PROFESSIONAL SERVICE CONTRACTS (GRANT-FUNDED, NON-BROOKS)

I. PURPOSE

This procedure sets forth policies and instructions for the acquisition, administration, and termination of professional service contracts and blanket professional service contracts (hereafter, collectively referred to as "Professional Service Contract(s)" unless otherwise stated) by Metra, which are funded by federal, state, or local grants and which do not involve Architectural and Engineering services (NOTE: See PU-07-RC for Professional Service Contracts that are not funded by capital funds, and PU-08-RC for Architectural and Engineering Service Contracts).

II. POLICY:

GENERAL:

Professional Service Contracts are exempt from competitive bidding pursuant to MET Ordinance 94-18 or NIRC Ordinance 94-1, but must follow grant requirements for the applicable competitive negotiations process. Professional Service Contracts using capital funds must be publicly advertised and competitively negotiated procurements in accordance with FTA guidelines. Proposals will be solicited in a newspaper with general circulation, and specific firms from lists of eligible vendors will be solicited, in order to reach an adequate number of professional firms. The solicitation and contract documents should follow FTA Circular 4220.1F and the Procurement Regulations. Circular 4220.1F applies to each FTA recipient of Federal assistance when it uses FTA assistance for third party contracts. The solicitation documents must also include as an Exhibit the Federal Transit Administration required contract clauses.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria.

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating contracts for A & E services by Metra, regardless of the funding mechanism. The services being solicited are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property.

II. POLICY:

GENERAL:

A & E services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. However, Circular 4220.1F applies to each FTA recipient of Federal assistance when it uses FTA assistance for third party contracts. The Brooks procurement method is based on the award of contracts for services such as A & E services (the nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualification-based procurement procedures may be used) using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, each Offeror's qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation. Metra does not utilize Design-Build type contracts.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria. Negotiate the offer/contract with the highest ranked Offeror. In the event Professional Services/ Contracts Division is unable to reach an agreement with such Offeror, terminate negotiations with such Offeror and enter into negotiations with the next highest ranking Offeror (and so on).

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra

FORMAL SOLICITATION AND AWARD FOR CONSTRUCTION CONTRACTS

I. PURPOSE

This procedure provides instructions for the solicitation of bids for construction contracts where the estimated cost is $10,000.00 or more.

II. POLICY

Metra will have and use an up-to-date list of firms registered in Metra's vendor database to use in the solicitation of construction contracts.

This procedure will be used when the acquisition of construction contracts will equal or exceed $10,000.00, unless specifically exempted.

Any construction acquisitions under $10,000.00 may be made utilizing Informal Quotations and Award (PU-04-RC), or if less than $500, Direct Purchases, (PU-13-RC).

The bid solicitation process will contain procedures for including Disadvantaged Business Enterprises on bidders' lists for the project to be procured, where appropriate.

Whenever possible and practical, Metra will endeavor to secure three or more bids (quotations) in the open market. Upon receiving a single bid in response to a solicitation, it should be determined if competition was adequate. This should include a review of the specifications for undue restrictiveness and will include a canvas of potential sources that chose not to submit a bid. A determination is to be made to either re-solicit or continue with the award based upon the information obtained in the review. The canvas conducted by Materials Management is to be maintained in the contract file. If the solicitation specified a vendor as a sole source, a written memorandum explaining the reasons for the restriction must be provided. The memorandum must be signed by the manager of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director, as appropriate, and the Executive Director.

A sole source must be the only available contractor that can provide the goods or services.

If capital funding is involved, Circular 4220.1F applies to each FTA recipient of Federal assistance when it uses FTA assistance for third party contracts. FTA/IDOT approval of a sole source may be required. The solicitation documents must also include as an Exhibit the Federal Transit Administration required contract clauses. For contracts that include capital funds, a price/cost analysis and a history of procurement must be prepared and maintained on file.

conditions of the option stated in the initial contract awarded. An option may not be exercised unless it has been determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

Revenue contracts should use a competitive process to permit interested parties an equal chance to obtain such a business opportunity. However, if a party is seeking access to a public transportation asset (such as a utility seeking cable access), and Metra is willing and able to provide contracts or licenses to other parties similarly situated, then competition is not necessary.

NARRATIVE DESCRIPTION OF PROCESS:

The process for requisitioning Materials and/or Services shall be initiated by the Requisitioner/User who shall prepare and submit a Purchase Requisition requesting such Materials and/or Services to the appropriate Budget Authority for approval. With respect to requisitioning Materials, before submitting a Purchase Requisition the Requisitioner/User shall first ascertain whether the desired Materials are already available by accessing the Materials System.

Purchase Requisitions that contain a specified Sole Source must be accompanied by a written memorandum explaining the reason(s) for such Sole Source restriction. Emergency Requisitions must be accompanied by a memorandum and supporting evidence, acceptable to the appropriate Budget Authority, in its sole discretion, fully justifying the requested Materials and/or Services and the urgency for such Materials and/or Services. Each such explanatory memorandum must be signed by the Manager of the applicable Department, Division, or Office, or the Deputy Executive Director, if appropriate, and the Executive Director.

III. DEFINITIONS

Bidder: See Glossary.

Brooks Method: See Glossary.

Budget Authority: means the appropriate required authorizing person(s) in accordance with FI-02-RC, Financial Approval Authorization.

Direct Purchase: See PU-13-RC.

Emergency Requisition: means a Purchase Requisitions with respect to Materials and/or Services directly related to the provision of Public Transportation Services by Metra or a Transportation Agency for which: (a) the Executive Director has made a written determination that an emergency situation exits which requires immediate delivery of such requested Materials and/or Services; and (b) the subject emergency situation is not directly or indirectly

Engineering and Management Specialists (EMS) Contract Procurement System Review Responses

Arbitrary Action (Element #12):
The Procurement System Review (PSR) noted that the details of the scoring methodology were not documented to support that the chosen contractor received the highest score. As explained below, there was a detailed and documented scoring methodology for each round of evaluations in the file, but they were not attached to the Evaluation Summaries. As set forth and described below, they are now attached for your review.

The Request for Proposal (RFP) listed the following evaluation factors: 1) Firm's experience with support projects of this type; 2) Experience with FTA New Starts reporting requirements; 3) Experience with data base systems enabling the generation of ad hoc reports; 4) Experience with FTA's QA/QC guidelines; 5) Experience in conducting oversight reviews to assure compliance with QA/QC requirements; 6) Firm's resource availability and ability to commit resources to the project; 7) Quality and soundness of the proposal; and 8) Cost of the proposal. (See attached RFP pages.) All factors were given equal weight, as shown on the attached Evaluation Summaries dated July 30, 2008 and August 19, 2008, with their respective evaluation rationale for the scoring methodology. (Please also see Metra's response to Element #36 below for a discussion of the relative order of importance of the evaluation criteria.)

Three (3) proposals were received. The evaluation committee reviewed and scored the proposals (Sharma & Assoc., Inc. (29 pts.); Diamond Management & Technology Consultants (29 pts.); and Engineering and Management Specialists, Inc., (EMS) (80 pts.)) and selected all three proposers to be interviewed (see the above-mentioned attached Evaluation Summary dated July 30, 2008). After the interviews were completed, the committee evaluated, scored, and ranked the proposers, again using the above-mentioned attached Evaluation Summary dated August 19, 2008.

The proposals received the following final scores, listed in order of highest ranking proposer first: EMS (80 pts. – $2,128,331.00); Diamond Management & Technology Consultants (30 pts. - $3,144,000.00); and Sharma & Assoc., Inc. (30 pts. - $3,229,542.00).

Several points are relevant regarding the scoring methodology and outcome. First, the scoring system was set up to rate proposers on each of the eight characteristics with a defined 1, 5, or 10 point score. The spread between these possible ratings makes the outcomes look vast: 80 points versus 30. But if a different scale were used, for example 1-2-3, the scores would have been 24 versus 13. So the scoring scale makes the difference in the scores appear more dramatic than it actually was. Second, the scores for Diamond and Sharma increased slightly in the evaluations after the interviews, indicating two separate analyses of the proposals. Third, one of the reasons that EMS consistently scored so much higher than the other two firms is because of its demonstrated overall experience. This DBE-owned corporation has over twenty years experience in QA/QC

oversight, audits, and federal program implementation requirements, and their proposal cost was significantly lower than the next lowest proposal. Moreover, the other two proposers had significantly less demonstrated overall experience with this type of work. (See the above-mentioned attached Evaluation Summaries.)

Pursuant to standard procedures, the evaluation committee discussed each proposal at length before and after interviews, utilizing the detailed scoring methodology attached to the above-referenced Evaluation Summaries. Moreover, attached please see Metra's proposed revised Procedure PU-06-RC, which now requires Metra staff to keep all supporting records in the file.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

Written Procurement Selection Procedures (Element #16):
As noted by the PSR, Metra's procedures correctly state that Metra will establish criteria and evaluate the proposals based on those criteria. We rank the proposals based upon those evaluations, and the highest ranked firms may be brought in for interviews. Based upon those interviews, the proposals are ranked again using the aforementioned criteria (see attached Metra Procedure PU-06-RC). However, the PSR noted that the language regarding the follow-up evaluation is not in the RFP documents, and in the future, it will be required to be done pursuant to procedures. (See attached proposed revised Procedures PU-06-RC and new template for RFPs.)

In addition, the PSR criticized Metra's method of evaluation, stating that its consensus scoring, as opposed to having individual scores from each team member, created a lack of transparency, especially since the discussions were not noted in the file. Metra's **practice** actually corresponds with FTA Best Practices and includes requiring each evaluation team member to score the proposals independently, and then to come together and discuss the scores in order to reach a consensus (see attached FTA BPPM). However, consensus scoring **after** interviews was not specifically detailed in Metra's procedures. Attached please see Metra's proposed revised Procedure PU-06-RC, which

incorporates this step and requires that all substantive records and evaluation documentation is maintained in the file.

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Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

Award to Responsible Contractor (Element #18):
The PSR noted that Metra has a process in place to indicate contractor responsibility, but that documentation was not provided on the bid tabulation sheet. Metra acknowledges that while Metra did determine that EMS was a responsible proposer, it was not checked on the bid tab sheet. However, please note that the evaluation committee had prior experience with EMS and knew them to be responsible based on that record. With respect to debarment, the Affidavit/Certifications regarding debarment for all proposers, including EMS, were properly signed and notarized, and were checked as part of the review for responsiveness (see attached signed/notarized Affidavit/Certification). Moreover, procurement staff checks the federal list of debarments to ensure prospective contractors are not banned from contracts. (See www.epls.gov/ (Excluded Parties List System).)

Because the consultants are on site at Metra for this contract, it is less critical that we visit the proposer's home office site. However, the "Responsibility Determination Form" that Dr. Harris provided in the PSR (see attached, modified to apply to Metra) is now incorporated into Metra's proposed revised procedures PU-06-RC (see attached) and part of the bid/proposal pre-award review process, and will be part of all contract files.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report

attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

Contract Term Limitation (Element #15):
The contract was issued for a term not-to-exceed six years (the projected life of the car rehab project). This is clearly a mistake and we issued a change order to reduce the term to 5 years (see attached). They have only completed 20% to 25% of the project, and the change order is not expected to have any adverse effect on the project completion or cost. Metra's procedures clearly prohibit contracts that are federally funded to be more than five years (see attached Metra procedure PU-08-RC), and it is a very rare occurrence that any Metra contract exceeds even three years. We have added this element on our revised IFB and RFP Checklists, and this action is to be verified by the buyer/contract administrator (see attached).

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

Written Procurement Selection Procedures (Element #16):
As noted by the PSR, Metra's procedures correctly state that Metra will establish criteria and evaluate the proposals based on those criteria. We rank the proposals based upon those evaluations, and the highest ranked firms will be brought in for interviews. Based upon those interviews, the proposals are evaluated/ranked again, using the aforementioned criteria (see attached Metra's Procedure PU-08-RC). However, the PSR noted that the **language regarding the follow-up evaluation is not in the RFP**

PROCUREMENT SYSTEM REVIEW TRAINING

Thursday, April 12, 2012

1:00 PM - 3:00 PM

MATERIALS MANAGEMENT BID OPENING ROOM

AGENDA

Elements to Review and Dicuss Corrective Actions:

1:00 PM – Session Starts

- **Element #19:** Sound and Complete Agreement
- **Element #24:** Clear, Accurate and Complete Specifications
- **Element #25:** Adequate Competition – Two or More Competitors

Break – 10 minutes

- **Element #36:** Evaluation (RFP)
- **Element #37:** Price and Other Factors (RFP)
- **Element #39:** Cost Analysis Required (Sole Source)

Metra

Meeting Attendance

Subject: PSR Training - Elements # 19, 24, 25, 36, 37 & 39

Date 4/12/12 Time 1:00 PM Location 11th Floor Bid Open Room

Name	Affiliation/Position	Phone No.	E-mail Address (if applicable)
Paul A. Kisielius	Metra	322-6666	Kisieliu@metrarr.c
Bruce Darin	Metra Materials	322-6655	BDARIN@METRARR.COM
Carolyn Capranica	Procurement	312.322.6667	ccapranica@metrarr.com
Bob Rich	Contracting Agent	322-6674	rrich@metrarr.com
Denise Johnson	Buyer	322-6654	djohnson@metrarr.com
Brenda Resendez	Buyer	6671	bresendez@metrarr.com
Urbano Damian	Buyer	6662	UDamian@metrarr.com
Steven Vargas	Sr. Math Coordinator	6669	SVARGAS@METRARR.COM
Anna Marie DiPrima	Prof. Services. Assoc.	6676	adiprima@metrarr.c
Dave DeYoung	Law Dept	6688	ddeyoung@metrarr.com
Ed Remus	MATERIALS / SR. AGENT	6658	eremus@metrarr.com
Lori Lee	Procurement / Sr. Buyer	6656	llee@metrarr.com
Carlos Gamboa	Pref Svcs / Contracts	6668	cgamboa@metrarr.com
Michael Darnell	Materials Analyst	6678	mdarnell@metrarr.com
Geoffrey Urban	Metra	6664	gurban@metrarr.com

2/02

Metra
The way to really fly

547 W Jackson Blvd Chicago Illinois 60661 (312) 322-6900 TTY#1-312-322-6774

Memorandum

DATE: April 6, 2012

TO: Procurement, Professional Services/Contracts and Materials Management Staff

FROM: Paul A. Kisielius, Senior Division Director
General Administration

SUBJECT: Procurement System Review Training – 3rd Session

I will be conducting the 3rd training session on selected deficient Elements that were identified during Metra's Procurement System Review ("PSR"). The 3rd session will be held Thursday, April 12th from 1:00 PM to 3:00 PM in the bid opening room. Those that receive this letter are expected to attend the mandatory training session. The PSR Elements that we will review on Thursday are Element numbers 19, 24, 25, 36, 37 and 39.

You have received a copy of the Procurement System Review Final Report dated July 21, 2011. The findings of deficiency start on page 22 and are in numerical order. Please read and be ready to discuss the respective deficiency for the Elements listed above. Prior to the training session each of you will receive the respective corrective action Metra is to institute for each deficient Element.

These sessions are intended to advance our knowledge of the FTA Circular and to correct our past procurement actions into acceptable and compliant procurement activities.

Metra
the way to really fly

547 W Jackson Blvd Chicago, Illinois 60661 (312) 322-6900 TTY#1-312-322-6774

Memorandum

DATE: April 6, 2012

TO: Procurement, Professional Services/Contracts and Materials Management Staff

FROM: Paul A. Kisielius, Senior Division Director
General Administration

SUBJECT: Procurement System Review Training

Attached are the Metra responses and corrective action to the Elements (Element Numbers 19, 24, 25, 36, 37 and 39) that we will be reviewing Thursday at the training session. Please read and be ready to discuss the respective responses.

attached, modified to apply to Metra, and also see proposed revised Procedure PU-08-RC).

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

Sound and Complete Agreement (Element #19):
The PSR stated that the agreement does not include the fixed-fee component of the contract value. Section 2 of the contract (see attached) states that the prescribed payment is on a "not-to-exceed" cost reimbursement basis. Pursuant to the terms of the Nippon contract, a 4400 Form was completed by the contractor for the work in accordance with the cost or price schedule. Rates were negotiated before the award of the contract (signed 9/8/09), as evidenced by the attached copy of the June 11, 2009, 4400 form from Nippon Sharyo to Metra. The "not to exceed" cost reimbursement includes all amounts payable by Metra to the contractor for the contract work. Additionally, the above-referenced Section 2 provides that the Consultant shall be paid only for the actual work completed at the prescribed rates, not to exceed the percentage of work completed as of the end of the billing period. We believe this payment methodology is more beneficial to Metra than the cost-plus-fixed-fee (CPFF) contracts because the contractor is not paid or guaranteed a flat fixed-fee regardless of the amount expended to complete the work but, rather, is paid a not-to-exceed fixed fee based on a percentage (i.e., 10%) of the actual costs expended for the work performed. Contractors have tried unsuccessfully to argue that they should be paid a fixed-fee based on the entire contract amount, but quickly drop this argument when we point out that the contract provides that the fee is based on the actual amount expended by the contractor for the work performed. Thus, if the work performed costs less than the not-to-exceed estimated amount, Metra ends up paying a lower fixed-fee than that which would be required under a CPFF contract.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR

findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

Evaluation Factors in RFP (Element #36):
The PSR stated that the evaluation criteria were not followed when making the award. In addition, price must always be a factor unless it is an A&E contract.

As we stated in our response to Element 12, the solicitation followed the Brooks Act process up to and through the recommendation of award to and receipt of a negotiated price from Nippon Sharyo.

The RFP set forth the evaluation criteria, which **excluded** price; the proposals were evaluated on their technical qualifications and then ranked; and price negotiations were conducted with the highest ranked firm, Nippon Sharyo. After these steps, staff made a recommendation to the former Executive Director for award of the contract to Nippon Sharyo. (See attached RFP with evaluation criteria; the evaluation plan/forms; staff memo dated May 7, 2009 recommending that price negotiations take place with Nippon Sharyo (with completed evaluation forms); and staff memo dated June 4, 2009 to the former Executive Director recommending award of the contract to Nippon Sharyo and that a not-to-exceed price had been established.) Price negotiations were finalized no later than June 11, 2009, as shown on the attached letter of that date from Nippon Sharyo with its submittal of its 4400 form.

However, after all the above mentioned steps, the former Executive Director insisted on having the other two proposers submit prices, which were received June 17, 2009 and June 29, 2009 (see attached). Therefore, after completion of the Brooks Method, Metra took an additional step, it appears, in order to confirm the reasonableness of Nippon Sharyro's negotiated price. In addition, please note that there were never negotiations with either of the other two proposers.

Metra recognizes that this final step went beyond the requirements of the Brooks Method and that it must not be repeated. Metra has amended its procedures (see attached proposed revised PU-02-RC) to require the Materials Management and user departments to analyze each specific procurement and determine whether the Brooks Method should be utilized, and that the documentation of that assessment be kept in the procurement file.

AGREEMENT

FOR PROFESSIONAL AND CONSULTING SERVICES

This Agreement is entered into this_____day of_____ in Chicago, Illinois, by and between the Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra, Metropolitan Rail ("**Metra**"), a public corporation under Illinois law, and Nippon Sharyo USA, Inc. ("**Consultant**"), having offices located at 2340 S. Arlington Heights Road, Suite 605, Arlington Heights, IL 60005. Consultant and Metra are sometimes collectively referred to as **"Parties."** In consideration of the promises and agreements set forth, the Parties agree:

1. SCOPE AND DESCRIPTION OF SERVICES.

Consultant will perform the following services ("**Work**"): Professional Services to provide Material Kitting and Manufacturing Engineering in the Rehab of 176 Amerail Bi-Level Passenger Railcars.

2. COMPENSATION.

Metra agrees to pay, and Consultant agrees to accept as full payment for the Work, the prices stipulated on Metra's Form 4400 (or any other cost or price schedule) which is either attached as Exhibit 2 of this Agreement, or incorporated by reference, as directed by Metra. With respect to the overhead rate described on a Form 4400, Consultant will list the immediate prior year overhead rate. The immediate prior year rate will be a provisional rate until audited by and/or accepted by Metra. Consultant may apply the provisional rate until such time as Metra's Audit Department audits and/or accepts Consultant's actual individual yearly overhead rate as computed under the Illinois Department of Transportation guidelines for computation of overhead rates. Once Metra audits and/or accepts the provisional overhead rate, the actual overhead rate for each year will be applied to each year's respective billings. Payments made using the provisional overhead rate will be subject to change and adjusted to conform with the audited and/or accepted overhead rate for each year. Consultant shall be paid only for the actual Work performed at the prescribed rates during the preceding billing period, not to exceed the percentage of the Work completed as of the end of the billing period. The full payment for the Work shall not exceed $5,995,673.00 ("**Total Price**"). The Total Price also includes the cost of all applicable taxes (where Metra is not exempt), bonds, if required, and other charges of every kind and nature. The Total Price shall not include, and Metra shall not pay, taxes or fees from which Metra is exempt. Metra is exempt from various federal taxes, all state and unit of local government taxes, and registration and license fees. Consultant shall promptly notify Metra, and afford it the opportunity before payment of any taxes, to contest said claims in the manner and to the extent it may elect, and to settle or satisfy such claims. Consultant shall submit all invoices on Metra Form #B100R107, which is incorporated into and made a part of this Agreement, along with all appropriate support documents, for all amounts to be paid by Metra under this Agreement. Invoices must be addressed to the "Accounts Payable Section" for payment and must show Metra Contract No. K90926 and Account No. 4304 - Grant Pending. Metra will pay

complete and accurate invoices within thirty (30) days of receipt. If Consultant fails to follow the instructions under this paragraph, or any instructions subsequently issued for its invoices, Metra may, at its sole discretion, reject Consultant's invoices for that billing period, and withhold payment of those invoices until such billing period as Consultant has complied with the requirements of this paragraph. An incomplete or inaccurate invoice will be deemed received only when completed and corrected to Metra's satisfaction. However, if the omission or inaccuracy is, in Metra's sole judgment, minor and inconsequential, Metra will use reasonable efforts to ascertain and pay the complete and accurate portion of the invoice. Payments are subject to audit and inspection as set forth in Section 9.B below.

3. PERFORMANCE OF THE WORK.

The term of this Agreement shall be from the date of execution until October 31, 2015.

A. NOTICE TO PROCEED. Consultant will, within fifteen (15) business days after Metra's issuance of a notice of award letter informing Consultant of its selection ("Notice of Award"), submit to Metra: (1) certificates of insurance from insurance carriers satisfactory to Metra, and in form, substance, and detail satisfactory to Metra; (2) if applicable, the signed subcontracts with DBE subconsultants; (3) a schedule for the project with submittal milestones; and (4) any other document stated elsewhere in this Agreement that is required prior to Metra's notification to Consultant to start the Work ("Notice to Proceed").

B. SCHEDULE.

1. Submission of Schedule. Time is of the essence and delays may have a direct and indirect cost to Metra's operations. As a condition to issuing the Notice to Proceed, Consultant shall submit a schedule, acceptable to Metra, showing submittal milestones for the Work. Consultant must adhere to and complete all Work by the time stated in the schedule approved by Metra. Consultant shall commence the Work promptly after receiving a Notice to Proceed from Metra.

2. Monthly Progress Reports. Consultant's schedule shall be updated and submitted to Metra in writing no less than monthly. Such report shall state whether or not the Work is progressing within schedule. If Consultant determines that the Work and milestones are not progressing within schedule, Consultant shall notify Metra of the reasons for the delay and identify each delayed activity (including duration and interrelationships between activities). In addition to any other remedy afforded to Metra, failure to submit monthly reports will be a default of this Agreement and is grounds for Metra to withhold payments until such reports are submitted.

3. Contents of Reports. Consultant shall not make any changes to the approved schedule, including the milestones, when reporting its progress in the monthly reports. The report information shall include the approved schedule dates and milestones and the following additional information:

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES RECITED BELOW:

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION D/B/A METRA

BY _____

PHILIP A. PAGANO
PRINT NAME

TITLE EXECUTIVE DIRECTOR

ATTEST

BY _____
DATE 9/8/09

TITLE ASSISTANT SECRETARY TO THE BOARD

CONSULTANT

BY _____

YASUHIKO MOCHIZUKI
PRINT NAME

TITLE President

ATTEST

BY _____
DATE 8/20/09

TITLE Assistant Engineering Mgr.

EXHIBIT 2

NIPPON SHARYO U.S.A., INC.

June 11, 2009

Mr. Edward H. Remus, C.P.M
Professional Services / Contracts
547 W. Jackson Blvd. – 11th Floor
Chicago, IL 60661

RE: Request for Proposals (RFP) RFP No. 16876
For the Material Kitting and Manufacturing Engineering in the Rehab of 176 Bi-Level Cars

Dear Mr. Remus,

Nippon Sharyo U.S.A., Inc. (NSUSA) is pleased to submit our Price Proposal to Metra in response to Request for Proposal No. 16876, for the Material Kitting and Manufacturing Engineering in the Rehab of 176 Bi-Level Cars.

Enclosed you will find 1 ORIGINAL (Marked) and 3 copies of **PART 2**: PRICE PROPOSAL. This Proposal includes the pricing for the entire 176 car contract broken down by year. This Proposal is valid for the period of 180 days after submission to Metra.

The NSUSA Team genuinely looks forward to having the opportunity to work with Metra, on this important Project.

Sincerely,

Nippon Sharyo U.S.A., Inc.

Yasuhiko Mochizuki
President, Nippon Sharyo U.S.A., Inc.

Cc: T. Hunt, D. Lawrence, D. Ostapa T. Ishihara, K. Ishigure, T. Oshima, Y. Hirose, Y. Ota, K. Hoshino, K. Kuriyama,

2340 S. Arlington Heights Rd.
Suite 605
Arlington Heights, IL
60005

Tel: 847-228-2700
Fax: 847-228-5530

2009 JUN 12 A 8:42
MATERIAL MGMT.

NIPPON SHARYO U.S.A., INC.

Proposal

For

Metra Material Kitting and Manufacturing Engineering in the Rehab of 176 Bi-Level Cars

RFP No. 16876

Specification No. M-08-009
Revision C
Date: 1-26-2009

Part 2 of 2

Price Proposal

Submitted by:

Nippon Sharyo U.S.A., Inc.
2340 S. Arlington Heights Road
Suite 605
Arlington Heights, IL 60005
Phone: 847-228-2700

NIPPON SHARYO U.S.A., INC.

PROPRIETARY / CONFIDENTIAL INFORMATION PROCEDURES

In accordance with RFP 16876, the following procedure for protecting applicable information is incorporated in our Proposal.

Procedure:

Proprietary information is addressed in the submission as follows:

a) The Items which contain proprietary information, have a title page with the following legend:

"This Proposal includes data that shall not be disclosed outside Metra, and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this Proposal". If however, a contract is awarded to this Proposer as a result of, or in connection with, the submission of this data, Metra shall have the right to duplicate, use or disclose the data to the extent provided in the resulting contract. This restriction does not limit Metra's right to use Information contained in this data, if it is obtained from another source without restriction.

b) The sheets of data wished to be restricted have the following legend in the lower left and right-hand corner of each page:

"Use or disclosure of data contained on this sheet, is subject to the restriction on the title page of this Proposal".

and / or

"Confidential"

and / or

"Confidentially Marked Drawings and Vertically Margined Text are Proprietary"

Although these notations appear on most pages, not all pages containing the notation include proprietary matter. Only (a) the entire contents of any table and figures stamped "Confidential" and (b) text marked with Vertical lines in the margins are Proprietary.

c) The Term "drawing", as used in the notation, includes all diagrams, drawings, tables and figures.

d) "Proprietary" as used in the notation, includes both (a) trade secrets including any proprietary design, process, data which are exempt from disclosure, and (b) proprietary financial information, which is exempt from disclosure, in accordance with applicable laws.

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

Project Start ~ December 2010

This form is to be used as provided under METRA procedures. It will be executed & submitted with proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME: Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME: Nippon Sharyo U.S.A., Inc.

ADDRESS: 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME: Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 75.00	$ 7,125.00
Metra Facility Project Instructor		1334	$ 75.00	$ 100,050.00
Project Engineer		390	$ 75.00	$ 29,250.00
Project Administrator		175	$ 65.00	$ 11,375.00
Project Coordinator		250	$ 65.00	$ 16,250.00
Calumet Facility Project Manager		270	$ 65.00	$ 17,550.00
Material Supervisor		450	$ 65.00	$ 29,250.00
Kitting Supervisor		430	$ 65.00	$ 27,950.00
QA / QC Receiving Inspection Supervisor		350	$ 65.00	$ 22,750.00
Transportation Coordinator		200	$ 65.00	$ 13,000.00
QA Personnel		400	$ 65.00	$ 26,000.00
Toyokawa Interior		470	$ 65.00	$ 30,550.00
Toyokawa Electrical		440	$ 65.00	$ 28,600.00
Toyokawa Mechanical		440	$ 65.00	$ 28,600.00
Toyokawa Design Engineer		140	$ 75.00	$ 10,500.00
TOTAL LABOR COST				$ 398,800.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 39,880.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 438,680.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 12,000.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 108,000.00
TOTAL TRAVEL			$ 120,000.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 700,000.00
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 54,940.00
9 TOTAL COSTS			$ 1,313,620.00
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 49,362.00
11. TOTAL ESTIMATED COSTS & PROFI			$ 1,362,982.00

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT .	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AUD		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	DT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying i

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 240,000.00
Super Steel Products Corporation	Building Shipping Crates		$ 120,000.00
Super Steel Products Corporation	Administration		$ 12,000.00
Super Steel Products Corporation	Flatbed Leasing		$ 97,000.00
Super Steel Products Corporation	Facility Usage & Utilities		$ 135,000.00
Meiko America, Inc.	Freight Costs		$ 96,000.00
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 700,000.00

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank shee		AMOUNT
1-SPECIAL TESTING		$ -
N/A -		$ -

		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 54,940.00
		$ -
		$ -
TOTAL OTHER DIRECT COSTS =		$ 54,940.00

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED IN
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF C(	
6/11/2009	Yasuhiko Mochizuki	President

METRA 4400 FORM

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2011 ~ December 2011

This form is to be used as provided under METRA procedures. It will be executed & submitted wi proposals in response to Requests for Proposals", for the procurement of professional or persona services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME: Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME: Nippon Sharyo U.S.A., Inc.

ADDRESS: 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME: Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 78.00	$ 7,410.00
Project Engineer		235	$ 78.00	$ 18,330.00
Project Administrator		165	$ 68.00	$ 11,220.00
Project Coordinator		150	$ 68.00	$ 10,200.00
Calumet Facility Project Manager		200	$ 68.00	$ 13,600.00
Material Supervisor		400	$ 68.00	$ 27,200.00
Kitting Supervisor		420	$ 68.00	$ 28,560.00
QA / QC Receiving Inspection Supervisor		350	$ 68.00	$ 23,800.00
Transportation Coordinator		200	$ 68.00	$ 13,600.00
QA Personnel		400	$ 68.00	$ 27,200.00
Toyokawa Design Engineer		100	$ 78.00	$ 7,800.00
TOTAL LABOR COST				$ 188,920.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 18,892.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 207,812.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 6,000.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 54,000.00
TOTAL TRAVEL			$ 60,000.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2			$ 645,400.00
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 41,716.00
9 TOTAL COSTS			$ 954,928.00
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 24,952.80
11. TOTAL ESTIMATED COSTS & PROF			$ 979,880.80

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	DT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packagin		$ 247,200.00
Super Steel Products Corporation	Building Shipping Crates		$ 48,000.00
Super Steel Products Corporation	Administration		$ 12,360.00
Super Steel Products Corporation	Flatbed Leasing		$ 99,910.00
Super Steel Products Corporation	Facility Usage & Utilities		$ 139,050.00
Meiko America, Inc.	Freight Costs		$ 98,880.00
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 645,400.00

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank shee		AMOUNT
1-SPECIAL TESTING		$ -
N/A		$ -

		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 41,716.00
		$ -
		$ -
TOTAL OTHER DIRECT COSTS =		$ 41,716.00

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED II
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF (
6/11/2009	Yasuhiko Mochizuki President

METRA 4400 FORM

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2012 ~ December 2012

This form is to be used as provided under METRA procedures. It will be executed & submitted with proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME: Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME: Nippon Sharyo U.S.A., Inc.

ADDRESS: 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME: Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 81.00	$ 7,695.00
Project Engineer		235	$ 81.00	$ 19,035.00
Project Administrator		165	$ 71.00	$ 11,715.00
Project Coordinator		150	$ 71.00	$ 10,650.00
Calumet Facility Project Manager		200	$ 71.00	$ 14,200.00
Material Supervisor		400	$ 71.00	$ 28,400.00
Kitting Supervisor		420	$ 71.00	$ 29,820.00
QA / QC Receiving Inspection Supervisor		350	$ 71.00	$ 24,850.00
Transportation Coordinator		200	$ 71.00	$ 14,200.00
QA Personnel		400	$ 71.00	$ 28,400.00
Toyokawa Design Engineer		100	$ 81.00	$ 8,100.00
TOTAL LABOR COST				$ 197,065.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 19,706.50
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 216,771.50
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

		$ -	$ -
TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 3,000.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 27,000.00
TOTAL TRAVEL			$ 30,000.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 663,322.00
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 43,019.35
9 TOTAL COSTS			$ 953,112.85
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 25,979.09
11. TOTAL ESTIMATED COSTS & PROFI			$ 979,091.94

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	OT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying it

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 254,616.00
Super Steel Products Corporation	Building Shipping Crates		$ 48,000.00
Super Steel Products Corporation	Administration		$ 12,730.80
Super Steel Products Corporation	Flatbed Leasing		$ 102,907.30
Super Steel Products Corporation	Facility Usage & Utilities		$ 143,221.50
Meiko America, Inc.	Freight Costs		$ 101,846.40
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 663,322.00

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank sheet	AMOUNT

1-SPECIAL TESTING		$ -
N/A		$ -
		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 43,019.35
		$ -
		$ -
	TOTAL OTHER DIRECT COSTS =	$ 43,019.35

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED IN
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF C	
6/11/2009	Yasuhiko Mochizuki	President

METRA 4400 FORM

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2013 ~ December 2013

This form is to be used as provided under METRA procedures. It will be executed & submitted with proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerall Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME Nippon Sharyo U.S.A., Inc.

ADDRESS 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 84.00	$ 7,980.00
Project Engineer		235	$ 84.00	$ 19,740.00
Project Administrator		165	$ 74.00	$ 12,210.00
Project Coordinator		150	$ 74.00	$ 11,100.00
Calumet Facility Project Manager		200	$ 74.00	$ 14,800.00
Material Supervisor		400	$ 74.00	$ 29,600.00
Kitting Supervisor		420	$ 74.00	$ 31,080.00
QA / QC Receiving Inspection Supervisor		350	$ 74.00	$ 25,900.00
Transportation Coordinator		200	$ 74.00	$ 14,800.00
QA Personnel		400	$ 74.00	$ 29,600.00
Toyokawa Design Engineer		100	$ 84.00	$ 8,400.00
TOTAL LABOR COST				$ 205,210.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 20,521.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 225,731.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

		$ -	$ -
TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 1,500.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 10,000.00
TOTAL TRAVEL			$ 11,500.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 672,511.64
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 43,886.08
9 TOTAL COSTS			$ 953,628.72
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 26,961.71
11. TOTAL ESTIMATED COSTS & PROFI			$ 980,590.43

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	DT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying i

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 252,984.48
Super Steel Products Corporation	Building Shipping Crates		$ 48,000.00
Super Steel Products Corporation	Administration		$ 13,112.72
Super Steel Products Corporation	Flatbed Leasing		$ 105,994.51
Super Steel Products Corporation	Facility Usage & Utilities		$ 147,518.14
Meiko America, Inc.	Freight Costs		$ 104,901.79
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 672,511.64

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank sheet	AMOUNT

1-SPECIAL TESTING		$ -
N/A		$ -
		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 43,886.08
		$ -
		$ -
TOTAL OTHER DIRECT COSTS =		$ 43,886.08

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED IN
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF C	
6/11/2009	Yasuhiko Mochizuki	President

METRA 4400 FORM

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2014 ~ December 2014

This form is to be used as provided under METRA procedures. It will be executed & submitted with proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME Nippon Sharyo U.S.A., Inc.

ADDRESS 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 88.00	$ 8,360.00
Project Engineer		235	$ 88.00	$ 20,680.00
Project Administrator		165	$ 78.00	$ 12,870.00
Project Coordinator		150	$ 78.00	$ 11,700.00
Calumet Facility Project Manager		200	$ 78.00	$ 15,600.00
Material Supervisor		400	$ 78.00	$ 31,200.00
Kitting Supervisor		420	$ 78.00	$ 32,760.00
QA / QC Receiving Inspection Supervisor		350	$ 78.00	$ 27,300.00
Transportation Coordinator		200	$ 78.00	$ 15,600.00
QA Personnel		400	$ 78.00	$ 31,200.00
Toyokawa Design Engineer		100	$ 88.00	$ 8,800.00
TOTAL LABOR COST				$ 216,070.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 21,607.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 237,677.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

		$ -	$ -
TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 1,500.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 10,000.00
TOTAL TRAVEL			$ 11,500.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 662,446.97
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 43,925.85
9 TOTAL COSTS			$ 955,549.82
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 28,160.28
11. TOTAL ESTIMATED COSTS & PROFI			$ 983,710.10

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	ÔT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying it

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 260,574.01
Super Steel Products Corporation	Building Shipping Crates		$ 19,200.00
Super Steel Products Corporation	Administration		$ 13,506.10
Super Steel Products Corporation	Flatbed Leasing		$ 109,174.34
Super Steel Products Corporation	Facility Usage & Utilities		$ 151,943.68
Meiko America, Inc.	Freight Costs		$ 108,048.84
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 662,446.97

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank sheet	AMOUNT

1-SPECIAL TESTING		$ -
N/A		$ -
		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 43,925.85
		$ -
		$ -
	TOTAL OTHER DIRECT COSTS =	$ 43,925.85

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED IN
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF C
6/11/2009	Yasuhiko Mochizuki President

METRA 4400 FORM

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2015 ~ Project Completion

"This form is to be used as provided under METRA procedures. It will be executed & submitted with proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME: Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME: Nippon Sharyo U.S.A., Inc.

ADDRESS: 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME: Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		50	$ 91.00	$ 4,550.00
Project Engineer		120	$ 91.00	$ 10,920.00
Project Administrator		120	$ 81.00	$ 9,720.00
Project Coordinator		120	$ 81.00	$ 9,720.00
Calumet Facility Project Manager		180	$ 81.00	$ 14,580.00
Material Supervisor		360	$ 81.00	$ 29,160.00
Kitting Supervisor		360	$ 81.00	$ 29,160.00
QA / QC Receiving Inspection Supervisor		320	$ 81.00	$ 25,920.00
Transportation Coordinator		180	$ 81.00	$ 14,580.00
QA Personnel		360	$ 81.00	$ 29,160.00
Toyokawa Design Engineer		50	$ 91.00	$ 4,550.00
TOTAL LABOR COST				$ 182,020.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 18,202.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 200,222.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

		$ -	$ -
TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 1,500.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 7,000.00
TOTAL TRAVEL			$ 8,500.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 446,125.69
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 31,407.28
9 TOTAL COSTS			$ 686,254.97
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 23,162.93
11. TOTAL ESTIMATED COSTS & PROFI			$ 709,417.90

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	OT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying li

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 182,401.80
Super Steel Products Corporation	Building Shipping Crates		$ 3,840.00
Super Steel Products Corporation	Administration		$ 9,454.27
Super Steel Products Corporation	Flatbed Leasing		$ 76,422.04
Super Steel Products Corporation	Facility Usage & Utilities		$ 98,373.39
Meiko America, Inc.	Freight Costs		$ 75,634.19
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 446,125.69

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank sheet	AMOUNT

Complete Specifications (Element #24):

Metra's Supplemental Response: The PSR noted that IFB/RFPs lacked a clear and adequate description of the services Metra was seeking. First, please note that Metra's current procedures require a clear and accurate description of the services sought, a statement of work, and detailed specifications and technical requirements (see attached PU-06-RC and PU-08-RC). As stated in Metra's response to the draft PSR, we have amended our procedures to augment and clarify the user departments' obligation to provide complete, clear, accurate, and unambiguous descriptions of services, and the procurement department's obligation to oversee this process. See attached proposed revised PU-06-RC and PU-08-RC.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

PROFESSIONAL SERVICE CONTRACTS (GRANT-FUNDED, NON-BROOKS)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating Professional Service Contracts and Blanket Professional Service Contracts (hereafter, collectively referred to as "Professional Service Contract(s)" unless otherwise stated) entered into by Metra, which are funded by federal, state, or local grants. Professional Services Contracts are exempt from competitive bidding pursuant to MET Ordinance 94-18 or NIRC Ordinance 94-1, but must follow grant requirements for the applicable competitive negotiations process.

NOTE: See PU-07-RC for Professional Service Contracts that are **not** funded by capital funds. They are also exempt from competitive bidding (pursuant to MET Ordinance 94-18 or NIRC Ordinance 94-1), but must be publicly advertised and competitively negotiated in some manner, unless the Executive Director approves an alternative process. For example, the Executive Director may approve the issuance of a Request for Proposals (RFP) without competition. In that event, PU-02-RC should be followed.

II. POLICY

Professional Service Contracts using capital funds must be publicly advertised and competitively negotiated procurements in accordance with FTA guidelines. Proposals will be solicited in a newspaper with general circulation, and specific firms from lists of eligible vendors will be solicited, in order to reach an adequate number of professional firms.

The process for an award of a Professional Service Contract under this PU-06-RC will be described in the Request for Proposals (RFP). The RFP will include a clear and accurate description of the technical requirements of the Professional Services to be acquired and a statement of work. The RFP will also include the evaluation criteria to be used, in relative importance, and all other considerations Metra deems relevant for the award of a Professional Service Contract. Any proposal which does not demonstrate the experience, expertise, and other factors necessary to assure achievement of the project's objectives may be eliminated from further consideration.

An independent Cost Estimate must be submitted with the requisition before soliciting proposals in order to establish a base cost for budgetary purposes. Metra will also perform a Cost Analysis of the offer accepted by Metra before entering into contract agreements with a professional services firm in order to measure the cost reasonableness of a proposal.

Metra will detail the significant history of the procurement and retain these records. Such records include, but are not limited to, the documentation relating to the rationale for the method of procurement, the selection of contract type, the basis of contractor selection or rejection using a criteria rating schedule for offers considered, and the basis for the

Complete Specifications (Element #24):

Metra's Supplemental Response: The PSR noted that IFB/RFPs lacked a clear and adequate description of the services Metra was seeking. First, please note that Metra's current procedures require a clear and accurate description of the services sought, a statement of work, and detailed specifications and technical requirements (see attached PU-06-RC and PU-08-RC). As stated in Metra's response to the draft PSR, we have amended our procedures to augment and clarify the user departments' obligation to provide complete, clear, accurate, and unambiguous descriptions of services, and the procurement department's obligation to oversee this process. See attached proposed revised PU-06-RC and PU-08-RC.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

PROFESSIONAL SERVICE CONTRACTS (GRANT-FUNDED, NON-BROOKS)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating Professional Service Contracts and Blanket Professional Service Contracts (hereafter, collectively referred to as "Professional Service Contract(s)" unless otherwise stated) entered into by Metra, which are funded by federal, state, or local grants. Professional Services Contracts are exempt from competitive bidding pursuant to MET Ordinance 94-18 or NIRC Ordinance 94-1, but must follow grant requirements for the applicable competitive negotiations process.

NOTE: See PU-07-RC for Professional Service Contracts that are **not** funded by capital funds. They are also exempt from competitive bidding (pursuant to MET Ordinance 94-18 or NIRC Ordinance 94-1), but must be publicly advertised and competitively negotiated in some manner, unless the Executive Director approves an alternative process. For example, the Executive Director may approve the issuance of a Request for Proposals (RFP) without competition. In that event, PU-02-RC should be followed.

II. POLICY

Professional Service Contracts using capital funds must be publicly advertised and competitively negotiated procurements in accordance with FTA guidelines. Proposals will be solicited in a newspaper with general circulation, and specific firms from lists of eligible vendors will be solicited, in order to reach an adequate number of professional firms.

The process for an award of a Professional Service Contract under this PU-06-RC will be described in the Request for Proposals (RFP). The RFP will include a clear and accurate description of the technical requirements of the Professional Services to be acquired and a statement of work. The RFP will also include the evaluation criteria to be used, in relative importance, and all other considerations Metra deems relevant for the award of a Professional Service Contract. Any proposal which does not demonstrate the experience, expertise, and other factors necessary to assure achievement of the project's objectives may be eliminated from further consideration.

An independent Cost Estimate must be submitted with the requisition before soliciting proposals in order to establish a base cost for budgetary purposes. Metra will also perform a Cost Analysis of the offer accepted by Metra before entering into contract agreements with a professional services firm in order to measure the cost reasonableness of a proposal.

Metra will detail the significant history of the procurement and retain these records. Such records include, but are not limited to, the documentation relating to the rationale for the method of procurement, the selection of contract type, the basis of contractor selection or rejection using a criteria rating schedule for offers considered, and the basis for the

PROFESSIONAL SERVICE CONTRACTS (GRANT-FUNDED, NON-BROOKS)

I. PURPOSE

This procedure sets forth policies and instructions for the acquisition, administration, and termination of professional service contracts and blanket professional service contracts (hereafter, collectively referred to as "Professional Service Contract(s)" unless otherwise stated) by Metra, which are funded by federal, state, or local grants and which do not involve Architectural and Engineering services (NOTE: See PU-07-RC for Professional Service Contracts that are not funded by capital funds, and PU-08-RC for Architectural and Engineering Service Contracts).

II. POLICY:

GENERAL:

Professional Service Contracts are exempt from competitive bidding pursuant to MET Ordinance 94-18 or NIRC Ordinance 94-1, but must follow grant requirements for the applicable competitive negotiations process. Professional Service Contracts using capital funds must be publicly advertised and competitively negotiated procurements in accordance with FTA guidelines. Proposals will be solicited in a newspaper with general circulation, and specific firms from lists of eligible vendors will be solicited, in order to reach an adequate number of professional firms. The solicitation and contract documents should follow FTA Circular 4220.1F and the Procurement Regulations.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria.

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating contracts for Architectural & Engineering services by Metra, regardless of the funding mechanism.

II. POLICY

Architectural & Engineering services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. The Brooks procurement method is based on the award of contracts for services such as architectural and engineering skills using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, Offerors' qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation.

Proposals will be solicited in a newspaper of general circulation and from Metra's vendor database of potential firms through direct mailings. No dollar value of any project will be directly or indirectly solicited in the initial Request for Proposals.

Requisitioner/User must mutually agree with DBE Administration on DBE requirements prior to involving the Professional Services/Contracts Division.

The process for an award of an Architectural & Engineering services contract will be described in the Request for Proposals (RFP). The RFP will include a clear and accurate description of the technical requirements of the Architectural & Engineering services to be acquired and a statement of work. The evaluation criteria, their relative value, and all other considerations to be used in making the award of an Architectural and Engineering services contract will be determined prior to solicitations. A list of criteria with their relative importance will be included in the RFP.

The evaluation of the proposals will be performed by a designated group that is specific for the solicitation. Any proposal which does not demonstrate the experience, expertise, and other factors necessary to assure achievement of the contract objectives may be eliminated from further consideration.

Contracts will be generally awarded on a maximum compensation basis. The contract will reflect a specified maximum amount, payment schedule, and method of payment. Advance payments prior to the incurrence of costs by the consultant is prohibited. The contract should not exceed five years including options, if any.

Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of a Professional Service Contract will be described in the respective Request for Proposals ("RFP") prepared by the Requisitioner/User. Services which are A & E services according to the Brooks Act, even though performed by a non-A & E firm, shall be considered A & E services. (See PU-08-RC).

Each RFP will be submitted by the Requisitioner/User to the Professional Services/ Contracts Division, together with a list of the specific Evaluation Criteria for the subject project, a statement of work that clearly, accurately and unambiguously describes the technical requirements for the service(s) to be procured, an independent Cost Estimate prepared by the Requisitioner/User to establish a base cost for budgetary purposes, and all other cost and non-cost related considerations the Requisitioner/User deems relevant for the award of a Professional Service Contract. The initial RFP prepared by the Requisitioner/User will be reviewed by the Professional Services/ Contracts Division who, after such review and in concert with the Requisitioner/User, will prepare the formal RFP. The formal RFP will be used by the Professional Services/ Contracts Division for the solicitation of proposals from Offerors.

Proposals with respect to a given RFP will be solicited through the use of advertisement in a newspaper of general circulation, e-mail notification to Offerors selected from Metra's vendor database, and posting on Metra's web site. The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, may coordinate the scheduling of a pre-proposal conference to clarify requirements and answer questions from potential Offerors. Attendance at such pre-proposal conference however, by potential Offeror(s) is not mandatory and absence at such a conference will not be used to treat an Offeror as non-responsive.

The evaluation of the proposals received with respect to a given RFP will be performed by the respective Evaluation Committee. Proposals with respect to an RFP will be first received by the Professional Services/ Contracts Division and first opened, in the presence of a witness, on the respective proposal due date. The Professional Services/ Contracts Division will perform an initial review and complete a Responsibility Determination Form with respect to each proposal. Any potential Offeror which does not demonstrate that they are a responsive Offeror necessary to assure achievement of the RFP objectives may be eliminated from further consideration. Proposals accepted by the Professional Services/ Contracts Division for consideration will be forwarded to the Evaluation Committee for review.

- Maintain all substantive records and correspondence with respect to each RFP, including the information identified in Section II above, in respective procurement file (other than large maps, drawing and plans which are to be kept in respective department file).

Material Management Department

- Reviews Professional Service Contracts and approves as appropriate.

Requisitioner/User

- Establishes project objectives, the tentative scope of work, and the Evaluation Criteria.
- Determines budgetary support limits and tentative project scheduling.
- Prepares initial Purchase Requisition and RFP.
- Prepares is a statement of work that clearly, accurately and unambiguously describes the technical requirements for the service(s) to be procured.
- Prepares an independent Cost Estimate.
- Determines the importance of contract completion or milestone date(s) so that the appropriate actions can be taken if noncompliance of the terms has occurred.
- Submits the RFP to DBE Administration for review of compliance with applicable DBE guidelines.
- Submits the RFP reviewed by DBE Administration to the General Development Department for review of compliance with applicable funding guidelines. Identifies appropriate funding account(s) and inputs onto the Purchase Requisition.
- Submits the RFP reviewed by the General Development Department to the Professional Services/ Contracts Division.
- Submits list of additional prospective proposed Offerors, if any.
- In concert with Professional Services/ Contracts Division, identifies Evaluation Committee for review of proposals and Contact Person to answer technical-related questions from prospective Offerors.
- Monitors contract performance by Offeror and notifies Professional Services/ Contracts Division upon completion or non-compliance.

Risk Management

- Determines insurance requirements for Professional Service Contracts.

Sr. Division Director General Administration

- Reviews Professional Service Contracts and approves as appropriate.

V. INSTRUCTIONS

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating contracts for A & E services by Metra, regardless of the funding mechanism.

II. POLICY:

GENERAL:

A & E services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. The Brooks procurement method is based on the award of contracts for services such as A & E services using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, each Offeror's qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria.

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of an Architectural & Engineering (A & E) services contract will be described in the respective Request for Proposals ("RFP") prepared by the

Requisitioner/User. Services which are not A & E services according to the Brooks Act, even though performed by an A & E firm, shall be considered professional services. (See PU-06-RC or PU-07-RC).

Each RFP will be submitted by the Requisitioner/User to the Professional Services/ Contracts Division, together with a list of the specific Evaluation Criteria for the subject project, a statement of work that is clear and an accurate description of the technical requirements for the service(s) to be procured, and an independent Cost Estimate prepared by the Requisitioner/User to establish a base cost for budgetary purposes. The initial RFP prepared by the Requisitioner/User will be reviewed by the Professional Services/ Contracts Division who, after such review and in concert with the Requisitioner/User, will prepare the formal RFP. No dollar value of any project will be directly or indirectly solicited in the formal RFP. The formal RFP will be used by the Professional Services/ Contracts Division for the solicitation of proposals from Offerors.

Proposals with respect to a given RFP will be solicited through the use of advertisement in a newspaper of general circulation, e-mail notification to Offerors selected from Metra's vendor database, and posting on Metra's web site. The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, may coordinate the scheduling of a pre-proposal conference to clarify requirements and answer questions from potential Offerors. Attendance at such pre-proposal conference however, by potential Offeror(s) is not mandatory and absence at such a conference will not be used to treat an Offeror as non-responsive.

The evaluation of the proposals received with respect to a given RFP will be performed by the respective Evaluation Committee. Proposals with respect to an RFP will be first received by the Professional Services/ Contracts Division and first opened, in the presence of a witness, on the respective proposal due date. The Professional Services/ Contracts Division will perform an initial review and complete a Responsibility Determination Form with respect to each proposal. Any potential Offeror which does not demonstrate that they are a responsive Offeror necessary to assure achievement of the RFP objectives may be eliminated from further consideration. Proposals accepted by the Professional Services/ Contracts Division for consideration will be forwarded to the Evaluation Committee for review.

Each proposal accepted for consideration will be evaluated by the Evaluation Committee, first individually by each member then collectively as a group, based on the Evaluation Criteria provided in the subject RFP. The Evaluation Committee shall make a preliminary evaluation of the submitted proposals to identify, normally, no less than the three highest ranked Offerors based on the subject Evaluation Criteria with which the Professional Services/ Contracts Division shall arrange to engage in further discussions.

- Obtains and/or performs pre-award Cost Analysis of proposals, in consultation with the Requisitioner/User, to determine the reasonableness of the final Offeror's costs.
- Negotiates and coordinates award of final contract to highest ranked Offeror(s) (or subsequently ranked Offeror(s), as applicable).
- Coordinates on-going administrative duties that are not directly related to the monitoring of the work performance, such as correspondence meeting minutes.
- Upon notification from Requisitioner/User, attempts to obtain compliance with contract provisions from non-complying Consultants and/or takes remedial actions with respect to the subject contract (including without limitation cancellation of the contract) as necessary.
- Completes Checklist-RFP's for each RFP.
- Maintain all substantive records and correspondence with respect to each RFP, including the information identified in Section II above, in respective procurement file (other than large maps, drawing and plans which are to be kept in respective department file).

Material Management Department

- Reviews contracts and approves as appropriate.

Requisitioner/User

- Establishes project objectives, the tentative scope of work, and the Evaluation Criteria.
- Determines budgetary support limits and tentative project scheduling.
- Prepares the initial Purchase Requisition and RFP. Prepares a clear, accurate description of the technical requirements, and unambiguously as possible for the services(s) to be procured.
- Prepares an independent Cost Estimate.
- Determines the importance of contract completion or milestone date(s) so that the appropriate actions can be taken if noncompliance of the terms has occurred.
- Submits the RFP to DBE Administration for review of compliance with applicable DBE guidelines.
- Submits the RFP reviewed by DBE Administration to the General Development Department for review of compliance with applicable funding guidelines. Identifies appropriate funding account(s) and inputs onto the Purchase Requisition.
- Submits the RFP reviewed by the General Development Department to the Professional Services/ Contracts Division.
- Submits list of additional prospective proposed Offerors, if any.
- In concert with Professional Services/ Contracts Division, identifies Evaluation Committee for review of proposals and Contact Person to answer technical-related questions from prospective Offerors.

Adequate Competition (Element #25):

Metra's Revised Response: The PSR noted three contracts with deficiencies pertaining to this Element.

With respect to the procurement for elevator design and installation services, the PSR noted that Metra's canvass of other potential firms revealed that several of them chose not to bid due to minimum qualifications that were included as an addendum to the solicitation. In this IFB, Metra did require that the successful bidder have several years experience and provide several references. These requirements were for the purpose of allowing Metra to hire a firm that was established and had performed "like" services in the past. Metra wanted to be able to rely on a highly experienced and expert elevator company to modernize our outdated, vintage elevators. We knew that the design and installation of the elevators are an enormous expense, and having an inexperienced firm providing these services would be exposing the taxpayers' money to a high-risk endeavor. In addition, there was a safety concern; with a relatively small bank of elevators available for the building use, if there was any type of delay caused by the company, it would significantly impact the flow of people into and out of the building. Although, we feel Metra's minimum requirements were appropriate for this contract we have revised our procedures to require specifications be detailed, but non-restrictive (see attached proposed revised PU-02-RC).

With respect to the procurement for rail grinding services, the PSR noted that the previous award was made on the basis of a single bid in the solicitation documents. The rail grinding service that was requested is a unique service in that it requires a very specialized piece of equipment to do the actual rail grinding. To the best of our knowledge, there are **only two** machines in the region that perform such services, and many times they are contracted out to other railroads, and therefore, they are not available to bid simultaneously on our solicitation. What happens in most solicitations is that the rail grinding service that is doing work in Metra's area will submit a bid, and the other firm out of the area will not submit a bid.

With respect to the procurement for IT system storage and hardware, the PSR noted that a single bid was received due to a brand name being specified in the IFB. The actual specification page did list IBM products; however, it also stated, "or approved equal" in the IFB (see attached specification). It has always been our practice to allow for an approved equal and to state that in the IFBs/RFPs, but it was not codified in our procedures. Metra has revised its procedures to state that where a brand name is specified, the solicitation must allow for offers of "an equal" product (see attached proposed revised PU-02-RC).

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR

findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

Out of Scope Changes (Element #44):

Metra's Revised Response: The PSR referenced three Metra contracts with changes that were not within the scope of the original contract and stated that they should have been treated as sole source procurements. Metra agreed with that assessment. The PSR also noted that Metra's original response was not adequate because it did not address the original reviewer's requirement that "Metra implement a process, procedures, rules or checks and balances to ensure that sole source amendments are properly reviewed." In response to this deficiency, Metra's has revised its procedures to indicate that a change order that is not within the scope of the original contract is to be considered a cardinal change or sole source procurement (see attached proposed revised PU-10-RC, Change Orders).

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

REQUISITIONING OF MATERIALS & SERVICES

I. PURPOSE

This procedure provides instructions for both the normal requisitioning of Materials and/or Services, and instructions for emergency requisitioning of Materials and/or Services. Materials and/or Services requested in an approved Purchase Requisition will be procured by, or otherwise at the direction of, the Procurement Division or Professional Services/ Contracts Division (as applicable) pursuant to the applicable Metra procedure. See:

- PU-04-RC – Informal Quotations and Awards;
- PU-05-RC – Formal Quotations and Awards;
- PU-06-RC – Professional Services Contracts (Grant Funded, Non Brooks Method);
- PU-07-RC – Professional Services Contracts (Non Grant Funded);
- PU-08-RC – Architectural and Engineering Services Contracts (Brooks Method);
- PU-08-RC – Blanket Purchase Orders and Releases;
- PU-13-RC – Direct Purchases;
- PU-14-RC – Formal Solicitation Award For Construction Contracts;
- PU-16-RC – Procurement of Rolling Stock; or
- PU-21-RC – Procurement Card Purchases.

II. POLICY

GENERAL:

This procedure should be utilized in the procurement of all Materials and/or Services. Requisitions for Materials and/or Services will be submitted by using a Purchase Requisition. Non-inventory Material is to be requisitioned separately from inventory Material. Personnel making unauthorized purchase commitments may be held financially liable and may also be subject to disciplinary action, including employment termination.

All procurement transactions will be conducted in a manner providing full and open competition (except as may be necessary in connection with an Emergency Requisition). The Procurement Division (or its designee) is responsible for negotiating with Bidders with respect to the procurement of requested Materials and the Professional Services/ Contracts Division (or its designee) is responsible for negotiating with Bidders with respect to the procurement of requested Services. The Requisitioner/User may not negotiate with Bidders except as necessary in connection with the permitted procurement of Materials and/or Services by Direct Purchases or purchases made by Procurement Card.

Purchase Requisitions that are FTA funded, must adhere to all of the applicable requirements set forth in Circular 4220.1F (attached and incorporated herein as Exhibit I) as well as all applicable Metra procurement procedures, business regulations, and other rules and regulations. Metra prohibits geographic preferences, except in those cases where applicable

IV. GENERAL RESPONSIBILITIES

Requisitioner/User

- Identify the need for Materials and/or Services.
- With respect to requested Materials, determine if the desired Materials are already available by accessing the Materials System.
- Prepare a Purchase Requisition(s) for needed Materials and/or Services which are not otherwise already available in accordance with the policy and procedures specified herein. Descriptions/specifications for materials or services should be well defined, but non restrictive. If specifying a "brand name" product the solicitation must allow for offers of "an equal" product, or allowing "an equal" product listing the salient characteristics that the "equal" product must meet to be acceptable for award. If requesting both inventory and non-inventory Materials, prepare a Purchase Requisition for inventory Materials and a separate Purchase Requisition for non-inventory Materials.
- Assign the proper user department account/distribution code(s) to the Materials and/or Services requested in the Purchase Requisition(s).
- Determine, consistent with past practice and subject to approval by Materials Management Department, whether Bidder(s) are to be selected solely on the basis of price, or whether other factors should be considered.
- If requesting Materials and/or Services from a Sole Source, provide memorandum explaining the reason(s) for such Sole Source restriction.
- If requesting Materials and/or Services pursuant to an Emergency Requisition, provide memorandum and supporting evidence fully justifying the requested Materials and/or Services and the urgency for such Materials and/or Services.

Budget Authority

- Review accuracy and completeness of Purchase Requisition, including required signatures, identification of proper account/distribution code(s), and attachment of memorandums and supporting evidence, as applicable. Return Purchase Requisition to Requisitioner/User which are incomplete, incorrect, or reflect improper account/distribution code(s) for correction and resubmission.
- Verify availability of funds in the appropriate budget account. Return Purchase Requisition to Requisitioner/User for which funds are not available.
- Assuming funds are available and Purchase Requisition is complete, approve Purchase Requisition and forward approved Purchase Requisitions to Materials Management Department.

EXHIBIT 1

INVITATION FOR BID

IBM System Storage

IFB NO.: 93449

IFB DUE DATE: December 5, 2008 @ 2:00 PM (LPT)

Sr. Buyer: Lori Lee

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION D/B/A METRA
PROCUREMENT
547 WEST JACKSON BOULEVARD
CHICAGO, IL 60661

Exhibit 1-M

SPECIFICATION FOR IBM 2423-931 SYSTEM STORAGE DS8000

Metra is accepting qualified bids to purchase a new System Storage subsystem to replace our current IBM 9393-X82 Ramac Virtual Array. This Storage subsystem is attached to an IBM 2066-0A1 mainframe computer. The replacement Storage subsystem will be an IBM 2423-931 or approved equal and of new manufacture.

1. Vendor to contract with IBM for all installation and de-installation of equipment

2. Vendor will be responsible for the de-installation and removal of the old IBM9393-X82 after installation of IBM 2423-931 and all data has been migrated to new machine.

3. Storage system must be delivered inside via elevators at 547 W. Jackson Blvd., 3rd floor, Information Systems computer room. Delivery personnel will provide adequate floor covering for the lobby area leading to the elevator.

4. Vendor will measure that the machine will fit into freight elevator.

5. IBM 2423-931 is to be of new manufacture and have the product numbers and feature numbers as listed in exhibit 1.

6. All delivery/freight charges are to be included with the price. Inside delivery only.

7. All cables for installation to be included.

8. All electrical outlet types are to be identified by part number to Metra to ensure that appropriate power outlets are ordered and installed by electricians. After installation of power outlet, IBM to inspect for correct type and phasing.

9. All costs associated for installation, delivery and de-installation to be included.

10. A schedule of costs must be included. Any warranty provisions also to be included.

11. Must be certified for maintenance. Maintenance to start after warranty period is complete.

12. Vendor to include Support and assistance for planning, implementation of new storage system and migration of data from old subsystem to the IBM 2423-931. A total of 40 hours to be added to help Metra staff plan and migrate data to new machine.

13. Vendor to work with Systems Programming and Operations staff in analyzing and assisting in changes to be made for backup strategies for new machine.

14. Vendor to review and ensure that all new software is ordered and in place at time of install that is needed for the new machine.

15. A tight schedule for actual migration of data from old machine to new machine will be scheduled for after installation of new equipment. Vendor to have appropriate staff on site to help Metra staff after installation.

16. Vendor will assist Metra staff to ensure that all data is removed and unreadable on old equipment. Assist and plan with Metra staff to run programs to wipe data off old equipment and certify that no data exists on old equipment.

17. Schedule of the actual installation of new IBM 2423-931 will be made by Metra to minimize disruption to Metra users.

IBM 2423-931 SYSTEM STORAGE - DS8000

Exhibit 1-M

HARDWARE

Product	Description	QTY
2423-931	System Storage DS8100	1
Features		
0700	OEL Indicator	1
0702	FICON Attach Indicator	1
0720	PTC Indicator	1
0780	PAV Indicator	1
0802	2.1 to 5.0 TB capacity	1
0900	Non-Standby CoD	1
0934	IBM System z Indicator	1
1050	Battery Assembly	2
1093	Line Cord (US/LA/AP/Canada)	1
1100	Management Console Internal	1
1210	Disk Enclosure Pair	1
1211	Disk Drive Cable Group 1	1
1300	I/O Enclosure Pair	2
1312	RIO-G Cable Group 2	1
1420	9 um Fibre Cable (LC)	4
2216	146 GB 15K Drive Set	1
2999	Disk Enclosure Filler	1
3041	Device Adapter Pair	1
3213	4Gb LW FCP/FICON Adapter	2
4011	16 GB Processor Memory	1
7001	OEL - 1 TB indicator	3
7090	OEL - FICON/ESCON indicator	1
7201	PTC - 1 TB indicator	3
7801	PAV - 1 TB indicator	3
9090	AC Voltage: 200V - 240V	1
9100	MC Keyboard - US English	1

Product	Description	QTY
2398-LFA	DS8000 Function Authorization	1
Features		
0934	IBM System z Indicator	1
7001	OEL - 1 TB Unit	3
7090	FICON Attachment	1
7201	PTC - 1 TB Unit	3
7801	PAV - 1 TB Unit	3

REQUISITIONING OF MATERIALS & SERVICES

I. PURPOSE

This procedure provides instructions for both the normal requisitioning of Materials and/or Services, and instructions for emergency requisitioning of Materials and/or Services. Materials and/or Services requested in an approved Purchase Requisition will be procured by, or otherwise at the direction of, the Procurement Division or Professional Services/ Contracts Division (as applicable) pursuant to the applicable Metra procedure. See:

- PU-04-RC – Informal Quotations and Awards;
- PU-05-RC – Formal Quotations and Awards;
- PU-06-RC – Professional Services Contracts (Grant Funded, Non Brooks Method);
- PU-07-RC – Professional Services Contracts (Non Grant Funded);
- PU-08-RC – Architectural and Engineering Services Contracts (Brooks Method);
- PU-08-RC – Blanket Purchase Orders and Releases;
- PU-13-RC – Direct Purchases;
- PU-14-RC – Formal Solicitation Award For Construction Contracts;
- PU-16-RC – Procurement of Rolling Stock; or
- PU-21-RC – Procurement Card Purchases.

II. POLICY

GENERAL:

This procedure should be utilized in the procurement of all Materials and/or Services. Requisitions for Materials and/or Services will be submitted by using a Purchase Requisition. Non-inventory Material is to be requisitioned separately from inventory Material. Personnel making unauthorized purchase commitments may be held financially liable and may also be subject to disciplinary action, including employment termination.

All procurement transactions will be conducted in a manner providing full and open competition (except as may be necessary in connection with an Emergency Requisition). The Procurement Division (or its designee) is responsible for negotiating with Bidders with respect to the procurement of requested Materials and the Professional Services/ Contracts Division (or its designee) is responsible for negotiating with Bidders with respect to the procurement of requested Services. The Requisitioner/User may not negotiate with Bidders except as necessary in connection with the permitted procurement of Materials and/or Services by Direct Purchases or purchases made by Procurement Card.

Purchase Requisitions that are FTA funded, must adhere to all of the applicable requirements set forth in Circular 4220.1F (attached and incorporated herein as Exhibit I) as well as all applicable Metra procurement procedures, business regulations, and other rules and regulations. Metra prohibits geographic preferences, except in those cases where applicable

IV. GENERAL RESPONSIBILITIES

Requisitioner/User

- Identify the need for Materials and/or Services.
- With respect to requested Materials, determine if the desired Materials are already available by accessing the Materials System.
- Prepare a Purchase Requisition(s) for needed Materials and/or Services which are not otherwise already available in accordance with the policy and procedures specified herein. Descriptions/specifications for materials or services should be well defined, but non restrictive. If specifying a "brand name" product the solicitation must allow for offers of "an equal" product, or allowing "an equal" product listing the salient characteristics that the "equal" product must meet to be acceptable for award. If requesting both inventory and non-inventory Materials, prepare a Purchase Requisition for inventory Materials and a separate Purchase Requisition for non-inventory Materials.
- Assign the proper user department account/distribution code(s) to the Materials and/or Services requested in the Purchase Requisition(s).
- Determine, consistent with past practice and subject to approval by Materials Management Department, whether Bidder(s) are to be selected solely on the basis of price, or whether other factors should be considered.
- If requesting Materials and/or Services from a Sole Source, provide memorandum explaining the reason(s) for such Sole Source restriction.
- If requesting Materials and/or Services pursuant to an Emergency Requisition, provide memorandum and supporting evidence fully justifying the requested Materials and/or Services and the urgency for such Materials and/or Services.

Budget Authority

- Review accuracy and completeness of Purchase Requisition, including required signatures, identification of proper account/distribution code(s), and attachment of memorandums and supporting evidence, as applicable. Return Purchase Requisition to Requisitioner/User which are incomplete, incorrect, or reflect improper account/distribution code(s) for correction and resubmission.
- Verify availability of funds in the appropriate budget account. Return Purchase Requisition to Requisitioner/User for which funds are not available.
- Assuming funds are available and Purchase Requisition is complete, approve Purchase Requisition and forward approved Purchase Requisitions to Materials Management Department.

Evaluation (RFP) (Element #36):

Metra's Revised Response: The PSR noted three contracts with deficiencies pertaining to this Element. Metra's revised response for two of those contracts, the A&E procurement for manufacturing engineering in the rehabilitation of 176 bi-level passenger railcars (Nippon Sharyo) and the QA oversight and general program support procurement (EMS), are addressed in separate documents previously submitted to the FTA for review. The deficiency identified for the one remaining contract is the focus below.

With respect to the procurement for Construction Management Services for the Union Pacific North Line Bridges, the solicitation followed the Brooks Act process up to and through the recommendation of award to and receipt of a negotiated price from V3 Companies of Illinois. The PSR noted that there was no statement that the criteria were listed in order of importance in the **RFP** (although the requirement was in Metra procedures. See PU-08-RC). Metra respectfully disagrees with this conclusion. Metra's RFP for this procurement listed four elements as the evaluation criteria in the evaluation methodology. They were: A) Recognition of problems and objectives, B) Approach plan and time schedule, C) Firm's previous experience, and D) Proposed team's ability and expertise. **The following paragraph also stated, "Items A through D will receive equal weight in the ratings of each proposal" (see attached Evaluation Methodology).** However, in accordance with the reviewer's recommendation, we have revised our procedures to make it clearer that a relative **weighted** value for each of the evaluation criteria is to be listed in the **RFP** and used by the Evaluation Committee when reviewing proposals (see attached proposed revised PU-06-RC, PU-07-RC and PU-08-RC).

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating contracts for Architectural & Engineering services by Metra, regardless of the funding mechanism.

II. POLICY

Architectural & Engineering services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. The Brooks procurement method is based on the award of contracts for services such as architectural and engineering skills using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, Offerors' qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation.

Proposals will be solicited in a newspaper of general circulation and from Metra's vendor database of potential firms through direct mailings. No dollar value of any project will be directly or indirectly solicited in the initial Request for Proposals.

Requisitioner/User must mutually agree with DBE Administration on DBE requirements prior to involving the Professional Services/Contracts Division.

The process for an award of an Architectural & Engineering services contract will be described in the Request for Proposals (RFP). The RFP will include a clear and accurate description of the technical requirements of the Architectural & Engineering services to be acquired and a statement of work. The evaluation criteria, their relative value, and all other considerations to be used in making the award of an Architectural and Engineering services contract will be determined prior to solicitations. A list of criteria with their relative importance will be included in the RFP.

The evaluation of the proposals will be performed by a designated group that is specific for the solicitation. Any proposal which does not demonstrate the experience, expertise, and other factors necessary to assure achievement of the contract objectives may be eliminated from further consideration.

Contracts will be generally awarded on a maximum compensation basis. The contract will reflect a specified maximum amount, payment schedule, and method of payment. Advance payments prior to the incurrence of costs by the consultant is prohibited. The contract should not exceed five years including options, if any.

K91049

FOR PROFESSIONAL AND CONSULTING SERVICES AGREEMENT
BLANKET CONTRACTS

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
D/B/A METRA
547 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60661

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AGREEMENT

FOR PROFESSIONAL AND CONSULTING SERVICES
BLANKET CONTRACTS

This Agreement is entered into this 25TH day of SEPTEMBER, 2009 in Chicago, Illinois, by and between the Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra, Metopolitan Rail ("**Metra**"); a public corporation under Illinois law, and V3 Companies of Illinois, Ltd. ("**Consultant**"), having offices located at 7325 Janes Avenue, Woodridge, IL 60517. Consultant and Metra are sometimes collectively referred to as "**Parties.**" In consideration of the promises and agreements set forth, the Parties agree:

1. SCOPE AND DESCRIPTION OF SERVICES.

Consultant will perform the following services ("**Work**"): Provide Blanket Professional Construction Management Services for Union Pacific North Line Bridges.

2. COMPENSATION.

The total amount of this blanket Agreement including all individual tasks, shall not exceed $8,400,000.00.

Once specific tasks have been assigned, Metra agrees to pay, and Consultant agrees to accept the prices stipulated on the cost or price schedule, which is attached as Exhibit 2. With respect to the overhead rate described on the attached schedule, Consultant will list the immediate prior year overhead rate. The immediate prior year rate will be a provisional rate until audited by and/or accepted by Metra. Consultant may apply the provisional rate until such time as Metra's Audit Department audits and/or accepts Consultant's actual individual yearly overhead rate as computed under the Illinois Department of Transportation guidelines for computation of overhead rates. Once Metra audits and /or accepts the provisional overhead rate, the actual overhead rate for each year will be applied to each year's respective billings. Payments made using the provisional overhead rate will be subject to change and adjusted to conform with the audited and/or accepted overhead rate for each year. Consultant shall be paid only for the actual Work performed at the prescribed rates during the preceding billing period, not to exceed the percentage of the Work completed as of the end of the billing period. The full payment for each task shall not exceed the total price as stated in the applicable Metra Form 4400 for that particular task(s) assigned ("**Total Price**"). The Metra Form 4400, agreed to by Metra and submitted by Consultant in response to Metra's request for a specific task, and the subsequent Notice to Proceed (defined below), are incorporated into this Agreement by reference. The Total Price also includes the cost of all applicable taxes (where Metra is not exempt), bonds, if required, and other charges of every kind and nature. The Total Price shall not include, and Metra shall not pay, taxes or fees from which Metra is exempt. Metra is exempt from various federal taxes, all state and unit of local government taxes, and registration and license fees. Consultant shall promptly notify Metra, and afford it the opportunity, before payment of any taxes, to contest said claims in the manner and to the extent it may elect, and to settle or satisfy such claims.

experience and resumes of key staff. This section should be **limited to approximately thirty (30), single sided pages.** All other information, such as exhibits, references, etc. shall be placed at the end of your proposal. It is encouraged to keep your proposal as brief and concise as possible.

V. PROPOSAL SUBMITTAL

A. Proposals are due no later than **10:00 am on Tuesday June 30, 2009**.

B. All proposals received after **10:00 am** will be returned unopened.

C. Proposal must be submitted to:

Mr. Ed Remus, Senior Contracting Agent
Metra- Materials Department
11th Floor East
547 West Jackson Blvd.
Chicago, Illinois 60661

VI. QUESTIONS

All Technical and Administrative questions must be received before **4:00 p.m. Monday June 8, 2009** by fax only to:

Mr. Ed Remus, Senior Contracting Agent
(312) 322-6619

Questions concerning DBE aspects may be directed to:

Ms. Sandi Llano
Director
DBE Administration
Telephone: (312) 322-6323

VII. EVALUATION METHODOLOGY

Metra's consideration for an award of a Professional Service Contract will be made on the following basis:

A. Recognition of problems and objectives
B. Approach plan and time schedule
C. Firm's previous experience
D. Proposed team's ability and expertise

Any proposal which does not clearly document the approach, expertise and other factors necessary to assure achievement of project objectives and successful completion within the allotted time and budget will be given lower ratings in the corresponding categories designated as Items A through D, inclusive. Items A through D will receive equal weight in the ratings of each proposal. Based on the completed evaluation, the proposal which clearly demonstrates the experience, expertise, planned work scope and other factors necessary to assure successful completion of the project will be offered a contract.

A contract will not be awarded without interviewing the three highest ranking proposers on each contract.

VIII. ATTACHMENTS

Attachment A – Project and Subconsultant Listing

IX. CONTRACT EXHIBITS

The following Exhibits are attached hereto and made a part hereof in addition to this Master Request for Proposal. The Exhibits shall become a part of the contract resulting from this Master Request for Proposal:

EXHIBIT 1A - Public Notice of Request for Proposal
EXHIBIT 1B - Affidavits/Certifications
EXHIBIT 1C - Metra Disadvantage Business Compliance Requirements
EXHIBIT 1D - D. O. T. Title VI Assurance
EXHIBIT 1E - Consultant Insurance Requirements
EXHIBIT 1F - Railroad Contractor Safety Requirements
EXHIBIT 1G - Sample Agreement
EXHIBIT 1H - Form 4400 - This is a sample, do not submit this form with your proposal.
EXHIBIT 1I - Phase Funding Agreement(s).

X. PREPROPOSAL MEETING

A preproposal meeting will be held on **Wednesday June 3, 2009 at 10:00 a.m.** at the Metropolitan Health Care Association of Chicago, 222 S Riverside Plaza, 19th floor, Chicago, IL.

PROFESSIONAL SERVICE CONTRACTS (GRANT-FUNDED, NON-BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for the acquisition, administration, and termination of professional service contracts and blanket professional service contracts (hereafter, collectively referred to as "Professional Service Contract(s)" unless otherwise stated) by Metra, which are funded by federal, state, or local grants and which do not involve Architectural and Engineering services (NOTE: See PU-07-RC for Professional Service Contracts that are not funded by capital funds, and PU-08-RC for Architectural and Engineering Service Contracts).

II. POLICY:

GENERAL:

Professional Service Contracts are exempt from competitive bidding pursuant to MET Ordinance 94-18 or NIRC Ordinance 94-1, but must follow grant requirements for the applicable competitive negotiations process. Professional Service Contracts using capital funds must be publicly advertised and competitively negotiated procurements in accordance with FTA guidelines. Proposals will be solicited in a newspaper with general circulation, and specific firms from lists of eligible vendors will be solicited, in order to reach an adequate number of professional firms. The solicitation and contract documents should follow FTA Circular 4220.1F and the Procurement Regulations.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria.

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at

Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of a Professional Service Contract will be described in the respective Request for Proposals ("RFP") prepared by the Requisitioner/User. Services which are A & E services according to the Brooks Act, even though performed by a non-A & E firm, shall be considered A & E services. (See PU-08-RC).

Each RFP will be submitted by the Requisitioner/User to the Professional Services/ Contracts Division, together with a list of the specific Evaluation Criteria for the subject project, a statement of work that clearly, accurately and unambiguously describes the technical requirements for the service(s) to be procured, an independent Cost Estimate prepared by the Requisitioner/User to establish a base cost for budgetary purposes, that is to incorporate and document an analysis as partial elements to rationalize the amount of the contract; foreseeable requirements, past and current usage, and possible procurement methods, and all other cost and non-cost related considerations the Requisitioner/User deems relevant for the award of a Professional Service Contract. The initial RFP prepared by the Requisitioner/User will be reviewed by the Professional Services/ Contracts Division who, after such review and in concert with the Requisitioner/User, will prepare the formal RFP. A list of criteria with their relative importance will be included in the RFP. The formal RFP will be used by the Professional Services/ Contracts Division for the solicitation of proposals from Offerors.

Proposals with respect to a given RFP will be solicited through the use of advertisement in a newspaper of general circulation, e-mail notification to Offerors selected from Metra's vendor database, and posting on Metra's web site. The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, may coordinate the scheduling of a pre-proposal conference to clarify requirements and answer questions from potential Offerors. Attendance at such pre-proposal conference however, by potential Offeror(s) is not mandatory and absence at such a conference will not be used to treat an Offeror as non-responsive.

The evaluation of the proposals received with respect to a given RFP will be performed by the respective Evaluation Committee. Proposals with respect to an RFP will be first received by the Professional Services/ Contracts Division and first opened, in the presence of a witness, on the respective proposal due date. The Professional Services/ Contracts Division will perform an initial review and complete a Responsibility Determination Form with respect to each proposal. Any potential Offeror which does not demonstrate that they are a responsive Offeror necessary to assure achievement of the RFP objectives may be eliminated from further consideration. Proposals accepted by the Professional Services/

Capital Funds/Capital Funding: See Glossary.

Checklist - RFP's: See Exhibit II hereto.

Clarification: See Glossary.

Contact Person means the individual(s) with technical expertise and/or experience in the subject matter of the RFP, selected and designated by the Requisitioner/User, in cooperation with the Professional Services/ Contracts Division, to respond to the technical inquiries of Offerors.

Consultant: See Glossary.

Contract Completion Form: See Exhibit III hereto.

Cost Analysis: See Glossary.

Cost Estimate: See Glossary.

Discussion: See Glossary.

Evaluation Committee means a group of individuals selected and designated by Requisitioner/User, in cooperation with the Professional Services/ Contracts Division, for their expertise in the subject matter of the respective solicitation.

Evaluation Criteria means a clear and accurate description prepared by the Requisitioner/User of: (a) all technical requirements of the subject professional services to be acquired; (b) all required or requested experience and expertise qualifications; (c) all key elements (if any) required by Requisitioner/User; (d) all other considerations to be used in making the award of the subject Professional Service Contract; and (e) as necessary or desired by the requesting division/department, an order of importance for each of the foregoing criteria to be used by the Evaluation Committee when reviewing Offeror proposals received with respect to the subject project.

Insurance Requirement Request Form: See Exhibit IV hereto.

Negotiation: See Glossary.

Notice to Proceed Letter: See Exhibit V hereto.

PROFESSIONAL SERVICE CONTRACTS (NON-GRANT-FUNDED, NON-BROOKS)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating Professional Service Contracts and Blanket Professional Service Contracts (hereafter, collectively referred to as "Professional Service Contract(s)" unless otherwise stated) entered into by Metra, which are **not** funded by federal, state, or local (including RTA) grants.

For Professional Services funded by the capital funding, see PU-06-RC. If any Request for Proposals (RFP) is to be issued without competition, PU-02-RC should be followed.

II. POLICY

All contracts (or purchase orders) for Professional Services under this PU-07-RC are exempt from competitive bidding pursuant to MET Ordinance 94-18 and NIRC Ordinance 94-1, but they should be let by competitive negotiation, after public notice, unless otherwise approved by the Executive Director. In employing an exception to this general policy and the procedures stated herein, a memorandum for approval by the Executive Director must be submitted by the concerned Department Head explaining the reason(s) why a non-competitive procurement of Professional Services should be made. Contracts for Professional Services to be awarded without competitive negotiation must be authorized and executed by the Executive Director, subject to the approval of the Metra Board of Directors.

A RFP should furnish a clear and accurate description of the Professional Services to be procured. It should also indicate the criteria for the evaluation of the proposals. An order of importance for each of the foregoing criteria to be used by the Evaluation Committee when reviewing proposals received with respect to the subject project. Metra will award contracts on the basis of the evaluation of the proposals from the standpoint of cost and other relevant factors deemed most advantageous to Metra.

Metra may choose to call the Offerors for discussions or negotiations, or award the contract without negotiations. If Metra opts for negotiations, Metra may restrict the field of choice to Offerors within a particular range. The range should be determined prior to solicitation by parameters such as qualifications, capability, and experience required to perform the Professional Services, the dollar value of the contract, and the ability to adhere to the time frame stipulated by Metra. If Metra chooses to exclude any Offeror falling within the range from negotiation, the reasons for such exclusion should be documented in detail by the concerned department head and approved by Professional Services/Contracts. If Metra wishes to reserve the right to award the contract without negotiation, it will be so stated in the RFP and properly justified.

II. POLICY (Continued)

Metra personnel must maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

III. DEFINITIONS

Blue Folder: See Glossary

Canvass: See Glossary

Clarification: See Glossary

Competitive Negotiation: See Glossary

Competitive Range: See Glossary

Consultant: See Glossary

Cost Estimate: See Glossary

Discussion: See Glossary

Evaluation Criteria: means a clear and accurate description prepared by the Requisitioner/User of: (a) all technical requirements of the subject professional services to be acquired; (b) all required or requested experience and expertise qualifications; (c) all key elements (if any) required by Requisitioner/User; (d) all other considerations to be used in making the award of the subject Professional Service Contract; and (e) as necessary or desired by the requesting division/department, an order of importance for each of the foregoing criteria to be used by the Evaluation Committee when reviewing Offeror proposals received with respect to the subject project.

Price/Cost Analysis: See Glossary

Professional Services: See Glossary

IV. RESPONSIBILITIES

Office of the General Counsel
Reviews contracts for legal compliance and provides clearance as appropriate.

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating contracts for A & E services by Metra, regardless of the funding mechanism.

II. POLICY:

GENERAL:

A & E services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. The Brooks procurement method is based on the award of contracts for services such as A & E services using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, each Offeror's qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria. Negotiate the offer/contract with the highest ranked Offeror. In the event Professional Services/ Contracts Division is unable to reach an agreement with such Offeror, terminate negotiations with such Offeror and enter into negotiations with the next highest ranking Offeror (and so on).

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of an Architectural & Engineering (A & E) services contract will be described in the respective Request for Proposals ("RFP") prepared by the Requisitioner/User. Services which are not A & E services according to the Brooks Act, even though performed by an A & E firm, shall be considered professional services. (See PU-06-RC or PU-07-RC).

Each RFP will be submitted by the Requisitioner/User to the Professional Services/ Contracts Division, together with a list of the specific Evaluation Criteria for the subject project, a statement of work that is clear and an accurate description of the technical requirements for the service(s) to be procured, and an independent Cost Estimate prepared by the Requisitioner/User to establish a base cost for budgetary purposes that is to incorporate and document an analysis as partial elements to rationalize the amount of the contract; foreseeable requirements, past and current usage, and possible procurement methods. The initial RFP prepared by the Requisitioner/User will be reviewed by the Professional Services/ Contracts Division who, after such review and in concert with the Requisitioner/User, will prepare the formal RFP. A list of criteria with their order of importance will be included in the RFP. No dollar value of any project will be directly or indirectly solicited in the formal RFP. The formal RFP will be used by the Professional Services/ Contracts Division for the solicitation of proposals from Offerors.

Proposals with respect to a given RFP will be solicited through the use of advertisement in a newspaper of general circulation, e-mail notification to Offerors selected from Metra's vendor database, and posting on Metra's web site. The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, may coordinate the scheduling of a pre-proposal conference to clarify requirements and answer questions from potential Offerors. Attendance at such pre-proposal conference however, by potential Offeror(s) is not mandatory and absence at such a conference will not be used to treat an Offeror as non-responsive.

The evaluation of the proposals received with respect to a given RFP will be performed by the respective Evaluation Committee. Proposals with respect to an RFP will be first received by the Professional Services/ Contracts Division and first opened, in the presence of a witness, on the respective proposal due date. The Professional Services/ Contracts Division will perform an initial review and complete a Responsibility Determination Form with respect to each proposal. Any potential Offeror which does not demonstrate that they are a responsive Offeror necessary to assure achievement of the RFP objectives may be eliminated from further consideration. Proposals accepted by the Professional Services/ Contracts Division for consideration will be forwarded to the Evaluation Committee for review.

Clarification: See Glossary.

Contact Person means the individual(s) with technical expertise and/or experience in the subject matter of the RFP, selected and designated by the Requisitioner/User, in cooperation with the Professional Services/ Contracts Division, to respond to the technical inquiries of Offerors.

Consultant: See Glossary.

Cost Analysis: See Glossary.

Cost Estimate: See Glossary.

Discussion: See Glossary.

Evaluation Committee means a group of individuals selected and designated by Requisitioner/User, in cooperation with the Professional Services/ Contracts Division, for their expertise in the subject matter of the respective solicitation.

Evaluation Criteria means a clear and accurate description prepared by the Requisitioner/User of: (a) all technical requirements of the subject A & E services to be acquired; (b) all required or requested experience and expertise qualifications; (c) all key elements (if any) required by Requisitioner/User; (d) all other considerations to be used in making the award of the subject Architectural and Engineering services contract; and (e) as necessary or desired by the requesting division/department, an order of importance for each of the foregoing criteria to be listed in the RFP and used by the Evaluation Committee when reviewing Offeror proposals received with respect to the subject project.

Negotiation: See Glossary.

Offeror means the subject potential vendor with respect to a given RFP. Once an Offeror has entered into a contract with Metra said Offeror will be deemed a Consultant for purposes of this procedure.

Price Analysis Documentation: See Exhibit III.

Qualified Range: See Glossary.

Request for Proposals ("RFP"): See Exhibit I. The initial draft of the RFP shall be completed by the Requisitioner/User. The Professional Services/ Contracts Division shall

Price and Other Factors (RFP) (Element #37):

Metra's Revised Response: The PSR referenced four Metra contracts pertaining to this Element. Please note that Metra's revised response for the A&E procurement for Blanket Signal Engineering Services (LTK Engineering contract), is addressed in a separate document previously submitted to the FTA for review. The deficiency identified for the three remaining contracts are the focus below.

Two contracts (V3 and AECOM) were clearly engineering design contracts for Real Estate (Bridges and Construction Management Services respectfully). The awards were for blanket type contracts and a not-to-exceed total dollar amount was determined before the solicitation process started. Moreover, Metra's procedures require offer negotiations with the highest ranked proposer (see attached Procedure PU-08-RC), and there **were** rate negotiations **before** the award date (September 25, 2009) of the V3 contract. In fact, V3 submitted hourly rates for its employees (see attached V3 Companies of Illinois Employee Compensation Hourly Rate Schedule), but the rates for two subconsultants (Cotter Consulting, Inc. and Geoservices, Inc.) in part were rejected as too high (see attached memo from Metra dated September 11, 2009). Thereafter, the firm reduced those rates so those individuals could work on the project (see attached invoice showing the lower, negotiated rates for those individuals). Although the memo does not specifically use the term "negotiate," this process required negotiation before a recommendation for award could be made. (See attached letter to V3 and pages from the contract showing the execution date of 9/25/2009.)

With respect to the AECOM contract, please note again that Metra's procedures require offer negotiations with the highest ranked proposer, and there **were** rate negotiations **before** the award date (see attached pages from the contract showing the execution date of 4/1/2010) of the AECOM contract. In fact, AECOM submitted hourly rates for its employees (see attached AECOM Employee Compensation Schedule), but the rates for four positions were rejected as too high (see attached memo from Metra dated September 10, 2009). Thereafter, the firm reduced those rates so those individuals could work on the project (see attached May, 2010 letter containing Metra's 4400 and invoice showing the lower, negotiated rates for those individuals). Although the memo does not specifically use the term "negotiate," this process required negotiation before a recommendation for award could be made. Metra will document future negotiations for A & E type blanket contracts in the procurement file.

With respect to the third contract (AST Corp.), the PSR stated that Metra used the Brooks Method improperly for non A&E services. Metra respectfully disagrees with this conclusion. Metra never designated this solicitation, or treated it, as an A & E contract requiring the Brooks Method. In this contract, Metra notified the public through the RFP process that cost **would** be an element of the evaluation and it was. However, the technical portion was opened, evaluated, and scored first, and then the cost portion was opened, evaluated, and scored. Finally, the two portions, technical and cost, determined the total score for the proposer. The RFP set forth the evaluation criteria, which **included** price; the proposals were evaluated on their technical qualifications and then ranked; and

price was then ranked to produce a total score for the proposers. The strategy and result were to evaluate the technical portion first, and then evaluate cost as part of the combined score, so as to limit the influence that price might have on the evaluators. After these steps, the former Executive Director made a recommendation to the Board of Directors for award of the contract to AST Corp., which explained the evaluation process and that cost was an element in the evaluation criteria (see attached RFP with evaluation criteria and the Executive Director's memo dated April 23, 2009 to the Board of Directors recommending award of the contract to AST Corp.). We believe this process is endorsed by the FTA Best Practices Manual (see attached). Metra has amended its procedures (see attached proposed revised PU-02-RC) to require the Materials Management and user departments to analyze each specific procurement and determine whether the Brooks Method should be utilized, and that the documentation of that assessment be kept in the procurement file. Also, please see revised procedure, PU-06-RC for Non-Brooks Method Professional Service Contracts that requires that cost be included in the evaluation ranking of the proposal. In addition, please note the attached new Checklist, which ensures that the procedures are properly followed.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for the acquisition, administration, and termination of contracts for A & E services by Metra, regardless of the funding mechanism.

II. POLICY:

GENERAL:

A & E services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. The Brooks procurement method is based on the award of contracts for services such as A & E services using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, each Offeror's qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria.

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of an Architectural & Engineering (A & E) services contract will be described in the respective Request for Proposals ("RFP") prepared by the

September 2, 2009

Mr. Edward Remus
Metra
547 West Jackson Boulevard , 5th Floor
Chicago, Illinois 60661

Re: Metra Contract No. K91049
Blanket Construction Management Services – Union Pacific Railroad North Line Bridges

Dear Mr. Remus:

Enclosed are the two signed Contracts for Metra Contract No. K91049. Also enclosed are employee compensation schedules and IDOT overhead letters from V3 and its subconsultants.

Please call me at 630-724-9200 or email me at lgallucci@v3co.com if you have any questions or would like additional information.

Sincerely,
V3 COMPANIES OF ILLINOIS LTD.

Louis J. Gallucci
Principal/Director of Public Sector Services

LJG/kjf

Cc: S. Llano

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

January 23, 2009

Subject: PRELIMINARY ENGINEERING
Consultant Unit
Prequalification File

Mr. David Heslinga
V3 Companies Of Illinois, Ltd.
7325 Janes Ave.
Woodridge, IL 60517-

Dear Mr. Heslinga:

We have completed our review of the corporate and financial information portion of your "Statement of Experience and Financial Condition" (SEFC) which you submitted for the fiscal year ending December 31, 2007. Your firm's total annual transportation fee capacity will be $59,600,000.

Your firm's payroll burden and fringe expense rate and general and administrative expense rate totaling 163% are approved on a provisional basis and will be used in evaluating your Statement(s) of Interest in our selection process. The actual rate used in agreement negotiations may be determined by our Bureau of Budget and Fiscal Management in a pre-award audit.

Your firm is required to report to this office any additions or deletions of your licensed professional staff or any other key personnel that would affect your firm's prequalification in a particular category. This report must be submitted within 15 calendar days of the change.

Your firm is prequalified until December 31, 2008. You will be given an additional six months from this date to submit the entire "Statement of Experience and Financial Condition" (SEFC) to remain prequalified.

Very truly yours,

Cheryl Cathey

Cheryl Cathey P.E.
Chief of Preliminary Engineering

V3 COMPANIES OF ILLINOIS EMPLOYEE COMPENSATION			
COMPANY			HOURLY
NAME	EMPLOYEE NAME	Classification	RATE
V3	Larry Mitchell	Senior Technician	$29.50
V3	Cheryl A. Ludwig	Construction Administrator	$26.00
V3	Chris Bartosz	Survey Project Manager	$51.93
V3	Sean G Ludwig	Technician I / II	$26.00
V3	Edward R. Benesh Jr.	Engineer I / II	$27.00
V3	Borut Vujic	Engineer I / II	$28.40
V3	Eric M Borgman	Project Manager Constr Public	$41.50
V3	Matthew E Powers	Resident Engineer	$43.30
V3	Tom R Valaitis	Division Director	$70.00
V3	Louis J. Gallucci	Principal	$70.00

Metra℠

September 11, 2009

Memorandum

To: File

From: E.H. Remus
Sr. Contracting Agent
Professional Services & Contracts

Subject: Contract No. K91049
Construction Management Services for U.P. North Line Bridges
V3 Companies of Illinois, Ltd.
Not-to-Exceed $8,400,000.00

Cost Review

The attached Wage and Overhead Rates submitted for the subject contract have been reviewed and most appear to be acceptable. The hourly Wage Rates for the Prime and some Subconsultants are within the range of those from other Metra consultants performing similar tasks.

Cotter Consulting, Inc. has a 2010 rate that exceeds the $70.00/hour maximum and Geoservices, Inc. has five (5) rates which are not allowable under this contract.

The chart below lists the Prime and Subconsultant Overhead Rates, which are provisionally approved by IDOT or WDOT per copies of the attached letters:

Company Name	Overhead Rate	Date of IDOT or *WDOT Letter
V3 Companies of Illinois, Ltd.	163.0%	January 23, 2009
Alfred Benesch & Co.	157.26%	September 18, 2008
Cotter Consulting, Inc.	127.48%	May 7, 2009
GeoServices, Inc.	199.83%	May 22, 2009
Hanno Webber & Associates	149.60%	*WDOT - May 21, 2007

Attachments

EHR/jrz

cc: C. Gamboa, Professional Services/Contracts
J. L. Lorenzini, Engineering
E. Fernandes, Audit
Vendor File

Metra is the registered service mark for the Northeast Illinois Regional Commuter Railroad Corporation.

Project 09178.02 Bill Grp X101

Geo Services, Inc.
Geotechnical, Environmental and Civil Engineering

OK MEP

September 17, 2010

Matt Powers /Accounts Payable
V3 Companies of Illinois, Inc.
7325 Janes Avenue
Woodridge, IL 60517

Phone: (630) 729-6294
Fax: (630) 724-9202

Geo Services, Inc.
EIN 36-4390972

Invoice Number 10198

Construction Inspection and Materials Testing
METRA Contract K91049
UP North Line
Chicago, IL

Progress Billing

GSI Project Number 10022

Charges for the month of Aug 10

$3,504.38

Please remit payment to:

Geo Services, Inc.
Accounts Receivable
805 Amherst Court, Suite 204
Naperville, IL 60565-3488 USA

This invoice is due and payable upon presentation
Please return a copy of this page with your payment

Date 9-23-10
Project _____ Bill Group _____
Account _____
Date _____ Approver Initials _____

RECEIVED
SEP 22 2010
By _____

Geo Services, Inc.

Invoice Number 10198

Construction Inspection and Materials Testing (GSI 10022)
V3 Companies of Illinois, Inc.

UP North Line METRA K91049
Chicago, IL

Invoice period from 01-Aug-10 to 31-Aug-10

PROFESSIONAL SERVICES	Quantity	Unit	Rate	Amount
DIRECT LABOR				
Senior Project Engineer (A Devia)	2.75	hrs	$ 35.25	$ 96.94
Materials Tester II (PW Regular M-F) (See Field Reports)	21.50	hrs	$ 34.94	$ 751.21
Adminstrative Assistant (B Tailor)	1.75	hrs	$ 23.75	$ 41.56
SUBTOTAL DIRECT LABOR				$ 889.71
OVERHEAD = SUBTOTAL DIRECT LABOR x			199.83%	$ 1,777.91
FIXED FEE = (SUBTOTAL DIRECT LABOR + OVERHEAD) x			10.00%	$ 266.76
DIRECT LABOR TOTAL				$ 2,934.38
DIRECT COSTS				
Concrete Strength Tests	15.00	each	$ 17.00	$ 255.00
Support Vehicle	7.00	days	$ 45.00	$ 315.00
TOTAL AMOUNT DUE THIS INVOICE				$ 3,504.38

Contract	$ 196,074.86
Previously Invoiced	$ -
Current Invoice	$ 3,504.38
Total Invoiced-to-Date	$ 3,504.38
Contract Balance	$ 192,570.48

FIELD INSPECTION SUMMARY
(See attached Field Reports)

DATE	NAME	Field Inspector		Vehicle (days)	Nuclear Gauge (days)
		Material Tester II (Regular)	Material Tester II (Overtime)		
TOTAL		21.50	-	7	-
05-Aug-10	Devia, A.	3.00		1	
06-Aug-10	Singla, R.	4.50		1	
09-Aug-10	Badsing, B.	2.00		1	
10-Aug-10	Singla, R.	4.00		1	
11-Aug-10	Badsing, B.	2.00		1	
13-Aug-10	Badsing, B.	4.00		1	
16-Aug-10	Badsing, B.	2.00		1	

LABORATORY TESTING SUMMRY
(See attached lab reports)

Laboratory Service	TOTALS
Date Cast	Tested
TOTALS	15
06-Aug-10	3
10-Aug-10	6
13-Aug-10	6

PROJECT DAILY TIME RECORD
Period From 01-Aug-10 to 31-Aug-10

NAME	DEVIA, Antonio	
TITLE	Senior Project Engineer	
Project	Construction Inspection UP North Line METRA K91049, Chicago IL	Job No. 10022

PROJECT HOURS

WEEK ENDING		SUN	MON	TUE	WED	THU	FRI	SAT	TOTAL
07-Aug-10	REGULAR						0.50		0.50
14-Aug-10	REGULAR			0.50	0.50		1.00		2.00
21-Aug-10	REGULAR			0.25					0.25
TOTAL HOURS									2.75

WORK PERFORMED

Project Engineer, Coordination, Telephone Discussions, Field Investigations, Report Preparation, Boring Log Preparation and Related Traveling

Employee Signature

PROJECT DAILY TIME RECORD
Period From 01-Aug-10 to 31-Aug-10

NAME	TAILOR, Bhavika	
TITLE	Administrative Assistant	
Project	Construction Inspection UP North Line METRA K91049, Chicago IL	Job No. 10022

PROJECT HOURS

WEEK ENDING		SUN	MON	TUE	WED	THU	FRI	SAT	TOTAL
14-Aug-10	REGULAR						1.00		1.00
21-Aug-10	REGULAR				0.50	0.25			0.75
TOTAL HOURS									1.75

WORK PERFORMED

Secretary, Administrative Assistant, Office Support, Report Preparation

Employee Signature

Geo Services, Inc.
Geotechnical, Environmental and Civil Engineering

COMPRESSIVE STRENGTH REPORT

Project Name	Metra Union Pacific North Line	Job Number	10022
Location	Addison to Balmoral Ave., Chicago, Illinois		
Client	V 3 Company		

Cast Date			06-Aug-10	5,000	psi @	14	Days
Location			Caisson - Lawrence & Ravenswood				
Slump	8.00	Inches	Concrete Temperature	87.0	F	Ambient Temperature	80.0 F
Air	8.00	%	Cast By	Raj S.		Mix Number	71PCC403Z

Cylinder Number	Date Tested	Age of Concrete (days)	Load (lbs)	Sample Height (in)	Sample Dia. (in)	H/D Ratio	Area (sq in)	Compressive Strength (psi)	Tested By	Fracture Type (1)
5196	13-Aug-10	7	129,680	12.00	6.00	2.00	28.27	4,590	JE	2
5197	20-Aug-10	14	137,910	12.00	6.00	2.00	28.27	4,880	JE	6
5198	20-Aug-10	14	140,160	12.00	6.00	2.00	28.27	4,960	JE	6
5199	03-Sep-10	28	150,830	12.00	6.00	2.00	28.27	5,330	JE	1
5200	03-Sep-10	28	146,250	12.00	6.00	2.00	28.27	5,170	JE	1
Note: 14 day compressive strength result below the minimum requirement.										

Notes:

1) Fracture Types: 1 - Cone; 2 - Cone and Split; 3 – Columnar; 4 - Shear; 5 – Top & Bottom Side Fractures; 6 – End Point Fracture
2) Tests performed in accordance with ASTM C-39/C-42 test methods.
3) Field testing performed in accordance with ASTM/AASHTO Test Methods: C29/T19, C31/T23, C138/T121, C172/T141, C231/T152, C173/T196, C143/T119 and C1064/T309.

1235 East Davis Street, Suite 101 ◊ Arlington Heights, IL 60005-2131 ◊ Phone (847) 253-3845 ◊ Fax (847) 253-0482
www.geoservicesinc.net

Geo Services, Inc.
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COMPRESSIVE STRENGTH REPORT

Project Name	Metra Union Pacific North Line	Job Number	10022
Location	Addison to Balmoral Ave., Chicago, Illinois		
Client	V 3 Company		

Cast Date		10-Aug-10	5,000	psi @	14	Days
Location		Caisson - Lawrence & Ravenswood				
Slump	7.00	Inches	Concrete Temperature	87.0 F	Ambient Temperature	85.0 F
Air	7.50	%	Cast By	Raj S.	Mix Number	71PCC403Z

Cylinder Number	Date Tested	Age of Concrete (days)	Load (lbs)	Sample Height (in)	Sample Dia. (in)	H/D Ratio	Area (sq in)	Compressive Strength (psi)	Tested By	Fracture Type (1)
5206	17-Aug-10	7	180,020	12.00	6.00	2.00	28.27	6,370	JE	1
5207	17-Aug-10	7	166,340	12.00	6.00	2.00	28.27	5,880	JE	2
5208	24-Aug-10	14	204,910	12.00	6.00	2.00	28.27	7,250	JE	1
5209	24-Aug-10	14	186,040	12.00	6.00	2.00	28.27	6,580	JE	2
5210	X									
5211	X									

Notes:

1) Fracture Types: 1 - Cone; 2 - Cone and Split; 3 – Columnar; 4 - Shear; 5 – Top & Bottom Side Fractures; 6 – End Point Fracture
2) Tests performed in accordance with ASTM C-39/C-42 test methods.
3) Field testing performed in accordance with ASTM/AASHTO Test Methods: C29/T19, C31/T23, C138/T121, C172/T141, C231/T152, C173/T196, C143/T119 and C1064/T309.
4) X: Final compressive strength result meets the minimum requirement, samples disposed.

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COMPRESSIVE STRENGTH REPORT

Project Name	Metra Union Pacific North Line	Job Number	10022
Location	Addison to Balmoral Ave., Chicago, Illinois		
Client	V 3 Company		

Cast Date		13-Aug-10		5,000	psi @	14	Days
Location		Caisson - Northeast Platform					
Slump	6.00	inches	Concrete Temperature	90.0	F	Ambient Temperature	85.0 F
Air	6.00	%	Cast By	Bart B.		Mix Number	71PCC403Z

Cylinder Number	Date Tested	Age of Concrete (days)	Load (lbs)	Sample Height (in)	Sample Dia. (in)	H/D Ratio	Area (sq in)	Compressive Strength (psi)	Tested By	Fracture Type (1)
5270	20-Aug-10	7	197,200	12.00	6.00	2.00	28.27	6,970	JE	1
5271	20-Aug-10	7	190,330	12.00	6.00	2.00	28.27	6,730	JE	2
5272	27-Aug-10	14								
5273	27-Aug-10	14								
5274	RES									
5275	RES									

Notes:

1) Fracture Types: 1 - Cone; 2 - Cone and Split; 3 – Columnar; 4 - Shear; 5 – Top & Bottom Side Fractures; 6 – End Point Fracture
2) Tests performed in accordance with ASTM C-39/C-42 test methods.
3) Field testing performed in accordance with ASTM/AASHTO Test Methods: C29/T19, C31/T23, C138/T121, C172/T141, C231/T152, C173/T196, C143/T119 and C1064/T309.

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FIELD TEST DATA REPORT

GSI Job Name	GSI Job Number
UP Northline Metra Station	10022

Day	Date
Thursday	080510

Location: Ravenswood and Lawrence

Contractor: Walsh Constructions Client: V3 Companies

Start Time	9 AM	Mileage	—	Regular Hours	3.0
Lunch Break	—	Toll Expenses	—		
Finish Time	11:45 AM	Nuclear Gauge	Yes / No	Over Time Hours	—
Travel Time	1.5	Vehicle	1.0		
Office Time	0.25	Other Equip.	SCP	TOTAL HOURS	3.0
Total Hours	3.0	Other			

Summary of Technical and/or Engineering Services performed

Field Test Data is estimated pending final laboratory test results. Field Locations, Elevations and depths are estimated

Geo Services personnel performed soil test inspection for the wood deck platform at the above location.

See attached report.

Resident Engineer Signature: Borut Vujic By: Antonio Devia

Resident Engineer Company: V3 Companies Geo Services, Inc. Field Technician

Geo Services, Inc.
Geotechnical, Environmental and Civil Engineering
An MBE - DBE Firm

FIELD TEST DATA REPORT

GSI Job Name	GSI Job Number	Day	Date
Metra UPRR Northline	10022	FRI	080610

Location: W. Lawrence Ave & N. Ravenswood Ave, Chicago, IL

Contractor: Walsh Const. Client: V3 Consult.

Start Time	10:00	Mileage		Regular Hours	4.5
Lunch Break	—	Toll Expenses	—		
Finish Time	4.5	Nuclear Gauge	Yes (No)	Over Time Hours	—
Travel Time	1.0	Vehicle	#351		
Office Time	—	Other		TOTAL HOURS	4.5
Total Hours	2:30	Other			

Summary of Technical and/or Engineering Services performed

Field Test Data is estimated pending final laboratory test results. Field Locations, Elevations and depths are estimated

Geo Services personal performed Concrete tests on
- Mix Design: 71PCC 403Z w/E.A. — Ozinga Plant #120.
- Mix Design Specs:
- Slump – 6-8" / Air – 5 to 8% / 5000psi @ 14 days.
- Concrete test results are as follow:

Ld#	Truck#	Ticket#	Slump	Air	C.T.	O.T.
1	2113	105673	8.0"	4.7%	87°F	80°F
#			Added 8.0oz Air			
1R			—	8.0%		
			Made 1 set of 6 Cyls on Ld#1 2@7days, 2@14days, & 2@ Res.			

Ld#1 also tested after pump cut top
Air – 5.5%

2	646	105688	7.0"	5.0%	87°F	80°F
2R			Added 8.0oz Air			
			—	7.8%	—	—
3	2408	105704	7.0"	7.5%	88°F	82°F
					—	—

Resident Engineer Signature: [signature]

Resident Engineer Company: V3

By: RAJ SINGLA

Geo Services, Inc. Field Technician

1235 East Davis Street, Suite 101 ♦ Arlington Heights, IL 60005-2145 ♦ Phone (847) 253-3845 ♦ Fax (847) 253-0482
www.geoservicesinc.net

Geo Services, Inc.
Geotechnical, Environmental and Civil Engineering

FIELD TEST DATA REPORT

Page ___ of ___

GSI Job Name	GSI Job Number	Day	Date
Metra UP Northline	10022	Mon	080910

Location: Lawrence & Ravenswood Chicago, IL

Contractor: Walsh Client:

Start Time		Mileage	15	Regular Hours	2.0
Lunch Break		Toll Expenses	40¢		
Finish Time		Nuclear Gauge	Yes / No	Over Time Hours	—
Travel Time	2.0	Vehicle	30¢		
Office Time		Other		TOTAL HOURS	2.0
Total Hours		Other			

Summary of Technical and/or Engineering Services performed

Field Test Data is estimated pending final laboratory test results. Field Locations, Elevations and depths are estimated

Picked up 1 set of 6 cyl. and delivered to lab.

Resident Engineer Signature _____

Resident Engineer Company _____

By [signature]

Geo Services, Inc. Field Technician

1235 East Davis Street, Suite 101 ♦ Arlington Heights, IL 60005-2145 ♦ Phone (847) 253-3845 ♦ Fax (847) 253-0482
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Geo Services, Inc.
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FIELD TEST DATA REPORT

Page ___ of ___

GSI Job Name	GSI Job Number	Day	Date
Metra UPRR Northline	10022	TUES.	081010

Location W. Lawrence Ave & N. Ravenswood; Chicago, IL

Contractor Walsh Const. Client V3 Consul.

Start Time	11:00	Mileage		Regular Hours	4.0
Lunch Break	—	Toll Expenses	—		
Finish Time	3:00	Nuclear Gauge	Yes / (No)	Over Time Hours	—
Travel Time	1.0	Vehicle	#351		
Office Time	—	Other		TOTAL HOURS	4.0
Total Hours	4.0	Other			

Summary of Technical and/or Engineering Services performed

Field Test Data is estimated pending final laboratory test results: Field Locations, Elevations and depths are estimated

- Geo Services personal performed Concrete tests on following Mix design.
- Mix # 71PCC4032 / 0 zinga Plant #120
- Pour type: Caissons
- Total: 18.0 C.Y. were placed.
- Test results are as follow:

	Ld #1	truck #	Ticket #	Slump	Air	C.T.	O.T.
Before Pump	1	629	105978	7.0	5.0%	87°F	85°F
		12 oz. Air was Added					
	1R	—	—	—	7.5%	—	—

Made 1 set of 6 cyls – 2@7days, 2@14days, & 2@ Res.

After Pump → Load #1 was tested after pump. Air test only 5.2%

Before Pump	2	646	105995	7.0	4.5%	87°F	85°F
		15 oz Air was added					
	2R	—	—	—	8.0%	—	—

Resident Engineer Signature Karolyn Tierney By Raj Singla

Resident Engineer Company V3 Geo Services, Inc. Field Technician

Geo Services, Inc.
Geotechnical, Environmental and Civil Engineering

FIELD TEST DATA REPORT

Page ___ of ___

GSI Job Name	GSI Job Number	Day	Date
Metra UP. Northline	10022	WEDS	08/11/10

Location Lawrence Ave AT Ravenswood Chicago, IL

Contractor Walsh Client Kenny Const

Start Time	7:45	Mileage	44	Regular Hours	2.0
Lunch Break	—	Toll Expenses	.80¢		
Finish Time	9:45	Nuclear Gauge	Yes (No)	Over Time Hours	—
Travel Time	1.75	Vehicle	301		
Office Time	.25	Other		TOTAL HOURS	2.0
Total Hours	2.0	Other			

Summary of Technical and/or Engineering Services performed

Field Test Data is estimated pending final laboratory test results. Field Locations, Elevations and depths are estimated

Picked up 1 set of 6 cyl and delivered to office.

Resident Engineer Signature _____

Resident Engineer Company _____

By _____

Geo Services, Inc. Field Technician

1235 East Davis Street, Suite 101 ♦ Arlington Heights, IL 60005-2145 ♦ Phone (847) 253-3845 ♦ Fax (847) 253-0482
www.geoservicesinc.net

Geo Services, Inc.
Geotechnical, Environmental and Civil Engineering

FIELD TEST DATA REPORT

Page ___ of ___

GSI Job Name	GSI Job Number	Day	Date
Metra UP Northline	10022	Fri	08/13/10

Location: Lawrence & Ravenswood Chicago IL

Contractor: Walsh Client: V3

Start Time	11:30	Mileage	42	Regular Hours	4.0
Lunch Break	—	Toll Expenses	Bad		
Finish Time	1:30	Nuclear Gauge	Yes (No)	Over Time Hours	—
Travel Time	2.0	Vehicle	301		
Office Time	—	Other		TOTAL HOURS	4.0
Total Hours	4.0	Other			

Summary of Technical and/or Engineering Services performed

Field Test Data is estimated pending final laboratory test results. Field Locations, Elevations and depths are estimated

Sunny 85-95°F
Concrete pour caissons for North East Platforms that are temporary.
Concrete producer: Ozinga 120 mix # 71PCC4037
Performed inspection of Concrete Slump & Air test Cone & Amb temp check. Test the 1st & 2nd loads cast 1 set of (4 cyl) on the 1st load. Tested for AE before & after pump on 1st load. 2.5% drop after pump. ~~and~~ from 6 → 3.5. Since temporary let it go. 2nd load tested before pump. 4.5%. Added 2 oz AE & retest. 8.0%.

Load	Slump	AE	Cone	Amb
1	6.0	6.0/3.5	90	85
2	—	4.5 add AE 8.0%	90	87

Resident Engineer Signature: [signature] By: [signature]

Resident Engineer Company: V3

Bart Badsing
Geo Services, Inc. Field Technician

Geo Services, Inc.
Geotechnical, Environmental and Civil Engineering

FIELD TEST DATA REPORT

Page ___ of ___

GSI Job Name	GSI Job Number	Day	Date
Metra UP Northline	10022	Mon	081610

Location: Lawrence & Ravenswood Chicago, IL

Contractor: Walsh Client: UP

Start Time		Mileage		Regular Hours	2.0
Lunch Break		Toll Expenses			
Finish Time		Nuclear Gauge	Yes / No	Over Time Hours	
Travel Time	1.75	Vehicle			
Office Time		Other		TOTAL HOURS	2.0
Total Hours	2.0	Other			

Summary of Technical and/or Engineering Services performed

Field Test Data is estimated pending final laboratory test results. Field Locations, Elevations and depths are estimated

Picked up 1 set of 6 cyl. and delivered to lab

Resident Engineer Signature _____

Resident Engineer Company _____

By _____

Geo Services, Inc. Field Technician

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www.geoservicesinc.net

Project 09178.02 Bill Grp X101

Geo Services, Inc.
Geotechnical, Environmental and Civil Engineering

OK MEP

October 7, 2010

Matt Powers /Accounts Payable
V3 Companies of Illinois, Inc.
7325 Janes Avenue
Woodridge, IL 60517

Phone: (630) 729-6294
Fax: (630) 724-9202

Geo Services, Inc.
EIN 36-4390972

Invoice Number 10223

Construction Inspection and Materials Testing
METRA Contract K91049
UP North Line
Chicago, IL

Progress Billing

GSI Project Number 10022

Charges for the month of Sep 10

$986.16

Please remit payment to:

Geo Services, Inc.
Accounts Receivable
805 Amherst Court, Suite 204
Naperville, IL 60565-3488 USA

This invoice is due and payable upon presentation
Please return a copy of this page with your payment

Geo Services, Inc.

Invoice Number 10223

Construction Inspection and Materials Testing (GSI 10022)
V3 Companies of Illinois, Inc.

UP North Line METRA K91049
Chicago, IL

Invoice period from 01-Sep-10 to 30-Sep-10

PROFESSIONAL SERVICES	Quantity	Unit	Rate	Amount
DIRECT LABOR				
Senior Project Engineer (A Devia)	0.75	hrs	$ 35.25	$ 26.44
Materials Tester II (PW Regular M-F) (See Field Reports)	5.50	hrs	$ 34.94	$ 192.17
Adminstrative Assistant (B Tailor)	0.50	hrs	$ 23.75	$ 11.88
SUBTOTAL DIRECT LABOR				$ 230.48
OVERHEAD = SUBTOTAL DIRECT LABOR x			199.83%	$ 460.57
FIXED FEE = (SUBTOTAL DIRECT LABOR + OVERHEAD) x			10.00%	$ 69.11
DIRECT LABOR TOTAL				$ 760.16
DIRECT COSTS				
Concrete Strength Tests	8.00	each	$ 17.00	$ 136.00
Support Vehicle	2.00	days	$ 45.00	$ 90.00
TOTAL AMOUNT DUE THIS INVOICE				$ 986.16

Contract	$ 196,074.86
Previously Invoiced	$ 3,504.38
Current Invoice	$ 986.16
Total Invoiced-to-Date	$ 4,490.54
Contract Balance	$ 191,584.32

FIELD INSPECTION SUMMARY
(See attached Field Reports)

DATE	NAME	Field Inspector		Vehicle (days)	Nuclear Gauge (days)
		Material Tester II (Regular)	Material Tester II (Overtime)		
TOTAL		5.50	-	2	-
10-Sep-10	Realeza, R.	3.50		1	
14-Sep-10	Realeza, R.	2.00		1	

LABORATORY TESTING SUMMRY
(See attached lab reports)

Laboratory Service	Sep-10
TOTALS	8
06-Aug-10	2
10-Sep-10	6

PROJECT DAILY TIME RECORD

Period From 01-Sep-10 to 30-Sep-10

NAME	DEVIA, Antonio	
TITLE	Senior Project Engineer	
Project	Construction Inspection UP North Line METRA K91049, Chicago IL	Job No. 10022

PROJECT HOURS

WEEK ENDING		SUN	MON	TUE	WED	THU	FRI	SAT	TOTAL
11-Sep-10	REGULAR						0.75		0.75
TOTAL HOURS									0.75

WORK PERFORMED

Project Engineer, Coordination, Telephone Discussions, Field Investigations, Report Preparation, Boring Log Preparation and Related Traveling

Employee Signature

PROJECT DAILY TIME RECORD

Period From 01-Sep-10 to 30-Sep-10

NAME	TAYLOR, Bhavika	
TITLE	Administrative Assistant	
Project	Construction Inspection UP North Line METRA K91049, Chicago IL	Job No. 10022

PROJECT HOURS

WEEK ENDING		SUN	MON	TUE	WED	THU	FRI	SAT	TOTAL
18-Sep-10	REGULAR						0.50		0.50
TOTAL HOURS									0.50

WORK PERFORMED

Secretary, Administrative Assistant, Office Support, Report Preparation

Employee Signature

Geo Services, Inc.
Geotechnical, Environmental and Civil Engineering

FIELD TEST DATA REPORT

Page 1 of 1

GSI Job Name	GSI Job Number
METRA UP NORTHLINE	10022

Day	Date
FRIDAY	3/10/10

Location METRA, LAWRENCE & WINNEMAC

Contractor _____ Client _____

Start Time	9:00 AM	Mileage		Regular Hours	3.5
Lunch Break	–	Toll Expenses			
Finish Time	10:15 AM	Nuclear Gauge	Yes (No)	Over Time Hours	
Travel Time	2.0	Vehicle	–		
Office Time	0.25	Other		TOTAL HOURS	3.5
Total Hours	3.50	Other			

Summary of Technical and/or Engineering Services performed

Field Test Data is estimated pending final laboratory test results. Field Locations, Elevations and depths are estimated

GSI personnel reported to the above referenced site to monitor the placement of concrete and perform field quality control tests for project specification compliance

Concrete Placement Summary

Location: LAWRENCE & WINNEMAC

Supplier: OZINGA Mix # 71-PCC-402 Yards Placed: 180Y Cubic Yards

Cylinders Cast: 1 Sets of 6 Cylinders, on Load # 2

Spec: 5000 PSI @ 4 Days

The concrete was monitored and tested for proper mix, slump, air content, and temperature and batch-to-placement time. In addition, 1 sets of 6 concrete test cylinders were cast for laboratory strength testing. Results of concrete tests are listed below:

LOAD #1: SLUMP = 8"
AIR % = 3.5%
TEMP = 75°F

LOAD #2: AIR ENTRAINMENT ADDED:
AIR % = 5.6%

Based on the field observations and testing, the concrete placed on this date was in general accordance with the project specifications.

Remarks :-

Resident Engineer Signature Kathryn Greene By _____

Resident Engineer Company _____ Geo Services, Inc. Field Technician

1235 East Davis Street, Suite 101 ♦ Arlington Heights, IL 60005-2145 ♦ Phone (847) 253-3845 ♦ Fax (847) 253-0482
www.geoservicesinc.net

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Geotechnical, Environmental and Civil Engineering

FIELD TEST DATA REPORT

GSI Job Name	GSI Job Number
METRA UP NORTHLINE	10022

Day	Date
TUESDAY	9/14/10

Location: LAWRENCE & RAVENSWOOD/WINNEMAC

Contractor: WALSH

Client:

Start Time	2:00 PM.	Mileage		Regular Hours	2.0
Lunch Break	–	Toll Expenses			
Finish Time	4:00 PM	Nuclear Gauge	Yes / (No)	Over Time Hours	
Travel Time	2.0	Vehicle			
Office Time		Other		TOTAL HOURS	2.0
Total Hours	2.0	Other			

Summary of Technical and/or Engineering Services performed

Field Test Data is estimated pending final laboratory test results. Field Locations, Elevations and depths are estimated

CONCRETE CYLINDERS (1 SET OF 6) WERE PICKED UP W/C WERE CASTED LAST FRIDAY (9/10/10) AT LAWRENCE & RAVENWOOD /WINNEMAC LOCATION.

ALL CYLINDERS WERE FOUND TO BE COVERED & UNDISTURBED. ALL CYLINDERS ARE SUBJECT FOR FURTHER TESTING.

Resident Engineer Signature: _____

Resident Engineer Company: _____

By: _____
Geo Services, Inc. Field Technician

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COMPRESSIVE STRENGTH REPORT

Project Name	Metra Union Pacific North Line	Job Number	10022
Location	Addison to Balmoral Ave., Chicago, Illinois		
Client	V 3 Company		

Cast Date	06-Aug-10	5,000	psi @	14	Days
Location	Caisson - Lawrence & Ravenswood				
Slump 8.00 inches	Concrete Temperature	87.0 F	Ambient Temperature	80.0 F	
Air 8.00 %	Cast By	Raj S.	Mix Number	71PCC403Z	

Cylinder Number	Date Tested	Age of Concrete (days)	Load (lbs)	Sample Height (in)	Sample Dia. (in)	H/D Ratio	Area (sq in)	Compressive Strength (psi)	Tested By	Fracture Type (1)
5196	13-Aug-10	7	129,680	12.00	6.00	2.00	28.27	4,590	JE	2
5197	20-Aug-10	14	137,910	12.00	6.00	2.00	28.27	4,880	JE	6
5198	20-Aug-10	14	140,160	12.00	6.00	2.00	28.27	4,960	JE	6
5199	03-Sep-10	28	150,830	12.00	6.00	2.00	28.27	5,330	JE	1
5200	03-Sep-10	28	146,250	12.00	6.00	2.00	28.27	5,170	JE	1
Note: 14 day compressive strength result below the minimum requirement.										

Notes:

1) Fracture Types: 1 - Cone; 2 - Cone and Split; 3 – Columnar; 4 - Shear; 5 – Top & Bottom Side Fractures; 6 – End Point Fracture
2) Tests performed in accordance with ASTM C-39/C-42 test methods.
3) Field testing performed in accordance with ASTM/AASHTO Test Methods: C29/T19, C31/T23, C138/T121, C172/T141, C231/T152, C173/T196, C143/T119 and C1064/T309.

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Geo Services, Inc.
Geotechnical, Environmental and Civil Engineering

COMPRESSIVE STRENGTH REPORT

Project Name	Metra Union Pacific North Line	Job Number	10022
Location	Addison to Balmoral Ave., Chicago, Illinois		
Client	V 3 Company		

Cast Date	10-Sep-10	5,000	psi @	14	Days
Location	Column B5 at Lawrence & Winnemac				
Slump 8.00 Inches	Concrete Temperature 75.0 F	Ambient Temperature 70-80 F			
Air 5.00 %	Cast By Richard R.	Mix Number 71PCC403Z			

Cylinder Number	Date Tested	Age of Concrete (days)	Load (lbs)	Sample Height (in)	Sample Dia. (in)	H/D Ratio	Area (sq in)	Compressive Strength (psi)	Tested By	Fracture Type (1)
5896	17-Sep-10	7	153,120	12.00	6.00	2.00	28.27	5,420	JE	6
5897	17-Sep-10	7	154,200	12.00	6.00	2.00	28.27	5,450	JE	1
5898	24-Sep-10	14	188,840	12.00	6.00	2.00	28.27	6,680	TOB	6
5899	24-Sep-10	14	170,850	12.00	6.00	2.00	28.27	6,040	TOB	3
5900	08-Oct-10	28	191,180	12.00	6.00	2.00	28.27	6,760	TOB	6
5901	08-Oct-10	28	204,560	12.00	6.00	2.00	28.27	7,240	TOB	6

Notes:

1) Fracture Types: 1 - Cone; 2 - Cone and Split; 3 – Columnar; 4 - Shear; 5 – Top & Bottom Side Fractures; 6 – End Point Fracture
2) Tests performed in accordance with ASTM C-39/C-42 test methods.
3) Field testing performed in accordance with ASTM/AASHTO Test Methods: C29/T19, C31/T23, C138/T121, C172/T141, C231/T152, C173/T196, C143/T119 and C1064/T309.

1236 East Davis Street, Suite 101 ♦ Arlington Heights, IL 60005-2131 ♦ Phone (847) 253-3845 ♦ Fax (847) 253-0482
www.geoservicesinc.net

Project 09178.02
Bill 6p X103

cotter

INVOICE

September 29, 2010
Invoice No: 20100693

V3 Consultants/Illinois
7325 Janes Avenue
Woodridge, IL 60517

Project Manager George Panages

Project 2010-037 Metra Construction Management - V3 Metra Contract K91049
Metra Project ET2112

Professional Services from August 28, 2010 to September 24, 2010

Fee					**931.04**
Professional Personnel					
		Hours	**Rate**	**Amount**	
Russell, Christine		145.00	28.00	4,060.00	
	Totals	145.00		4,060.00	
	Total Labor				**4,060.00**
Reimbursable Expenses					
Verizon Wireless					
9/21/10 Verizon Wireless		C.Russell		55.05	
	Total Reimbursables			**55.05**	**55.05**
Additional Fees					
Overhead		129.32% of 4,060.00		5,250.39	
	Total Additional Fees			**5,250.39**	**5,250.39**

Billing Limits	**Current**	**Prior**	**To-Date**
Fees	931.04	1,637.35	2,568.39
Limit			29,173.83
Remaining			26,605.44
Labor	4,060.00	7,140.00	11,200.00
Limit			128,247.90
Remaining			117,047.90

Please remit to :
Cotter Consulting, Inc., Department 20-1003, P.O. Box 5940, Carol Stream, IL 60197-5940, (P) 630-724-9730

Expenses	55.05	109.45	164.50
Limit			1,820.00
Remaining			1,655.50
Units	0.00	0.00	0.00
Limit			23,760.00
Remaining			23,760.00
Additional Fees	5,250.39	9,233.45	14,483.84
Limit			163,490.42
Remaining			149,006.58

Total this Invoice **$10,296.48**

Outstanding Invoices

Number	Date	Balance
20100563	8/6/10	7,894.63
20100630	9/3/10	10,225.62
Total		**18,120.25**

Total Now Due **$28,416.73**

Billings to Date

	Current	Prior	Total
Fee	931.04	1,637.35	2,568.39
Labor	4,060.00	7,140.00	11,200.00
Expense	55.05	109.45	164.50
Add-on	5,250.39	9,233.45	14,483.84
Totals	**10,296.48**	**18,120.25**	**28,416.73**

Please remit to :
Cotter Consulting, Inc., Department 20-1003, P.O. Box 5940, Carol Stream, IL 60197-5940, (P) 630-724-9730

Billing Backup

Wednesday, September 29, 2010

Cotter Consulting Inc. | Invoice 20100693 Dated 9/29/10 | *6:15:01 PM*

Project 2010-037 Metra Construction Management - V3 Metra Contract K91049
Metra Project ET2112

Professional Personnel

		Hours	Rate	Amount	
Russell, Christine	8/30/10	8.00	28.00	224.00	
Russell, Christine	8/31/10	8.00	28.00	224.00	
Russell, Christine	9/1/10	8.00	28.00	224.00	
Russell, Christine	9/2/10	8.00	28.00	224.00	
Russell, Christine	9/3/10	8.00	28.00	224.00	
Russell, Christine	9/7/10	8.00	28.00	224.00	
Russell, Christine	9/8/10	8.00	28.00	224.00	
Russell, Christine	9/9/10	7.00	28.00	196.00	
Russell, Christine	9/10/10	8.00	28.00	224.00	
Russell, Christine	9/13/10	8.00	28.00	224.00	
Russell, Christine	9/14/10	8.00	28.00	224.00	
Russell, Christine	9/15/10	8.00	28.00	224.00	
Russell, Christine	9/16/10	8.00	28.00	224.00	
Russell, Christine	9/17/10	8.00	28.00	224.00	
Russell, Christine	9/20/10	8.00	28.00	224.00	
Russell, Christine	9/21/10	4.00	28.00	112.00	
Russell, Christine	9/22/10	8.00	28.00	224.00	
Russell, Christine	9/23/10	6.00	28.00	168.00	
Russell, Christine	9/24/10	8.00	28.00	224.00	
Totals		145.00		4,060.00	
Total Labor					**4,060.00**

Reimbursable Expenses

Verizon Wireless

13929	9/21/10 Verizon Wireless / Invoice: 2457967540, 9/12/2010	55.05	
	Total Reimbursables	**55.05**	**55.05**

Total this report **$4,115.05**

Please remit to :
Cotter Consulting, Inc., Department 20-1003, P.O. Box 5940, Carol Stream, IL 60197-5940, (P) 630-724-9730

Detailed Timesheet for the Period Ending 9/3/10

Friday, September 03, 2010

Cotter Consulting Inc.

8:08:28 AM

Employee CR Russell, Christine

Signed Russell, Christine

Approved

Submitted

Organization INFR.TRAN

			Total Hr	Sat 08/28	Sun 08/29	Mon 08/30	Tue 08/31	Wed 09/01	Thu 09/02	Fri 09/03
2010-037	Metra Construction Management - V3								Company: V3 Consultants/Illinois	
PROF	Metra Construction Management - V3									
110		Reg	40.00			8.00	8.00	8.00	8.00	8.00
DAILY TOTALS		Reg	40.00			8.00	8.00	8.00	8.00	8.00

Detailed Timesheet for the Period Ending 9/10/10

Tuesday, September 14, 2010

Cotter Consulting Inc.

2:43:18 PM

Employee CR Russell, Christine

Signed Russell, Christine

Approved

Submitted

Organization INFR.TRAN

			Total Hr	Sat 09/04	Sun 09/05	Mon 09/06	Tue 09/07	Wed 09/08	Thu 09/09	Fri 09/10
Holiday	Holiday									
		Reg	8.00			8.00				
Personal	Personal									
		Reg	1.00						1.00	
2010-037	Metra Construction Management - V3									
PROF	Metra Construction Management - V3									
110		Reg	31.00				8.00	8.00	7.00	8.00
DAILY TOTALS		Reg	40.00			8.00	8.00	8.00	8.00	8.00

Company: V3 Consultants/Illinois

Detailed Timesheet for the Period Ending 9/17/10

Friday, September 17, 2010

Colter Consulting Inc.

9:46:43 AM

Employee CR Russell, Christine

Signed Russell, Christine

Approved

Submitted

Organization INFR.TRAN

			Total Hr	Sat 09/11	Sun 09/12	Mon 09/13	Tue 09/14	Wed 09/15	Thu 09/16	Fri 09/17
2010-037	Metra Construction Management - V3								Company: V3 Consultants/Illinois	
PROF	Metra Construction Management - V3									
110		Reg	40.00			8.00	8.00	8.00	8.00	8.00
DAILY TOTALS		Reg	40.00			8.00	8.00	8.00	8.00	8.00

Detailed Timesheet for the Period Ending 9/24/10

Friday, September 24, 2010

Cotter Consulting Inc.

8:51:14 AM

Employee CR Russell, Christine

Signed Russell, Christine

Approved

Submitted

Organization INFR.TRAN

			Total Hr	Sat 09/18	Sun 09/19	Mon 09/20	Tue 09/21	Wed 09/22	Thu 09/23	Fri 09/24
2010-037	Metra Construction Management - V3								Company: V3 Consultants/Illinois	
PROF	Metra Construction Management - V3									
110		Reg	34.00			8.00	4.00	8.00	6.00	8.00
ADMINISTRATION	Administration									
TR	Administration Transportation									
110		Reg	6.00				6.00			
DAILY TOTALS		Reg	40.00			8.00	10.00	8.00	6.00	8.00

Project 05178.02
Bill Grp X103

cotter

INVOICE

OK mep 11/8/10

November 2, 2010
Invoice No: 20100789

Dawn Hannigan
V3 Consultants/Illinois
7325 Janes Avenue
Woodridge, IL 60517

Project Manager George Panages

Project 2010-037 Metra Construction Management - V3 Metra Contract K91049
Metra Project ET2112

Professional Services from September 25, 2010 to October 29, 2010

Fee **1,168.62**

Professional Personnel

	Hours	Rate	Amount	
Russell, Christine	182.00	28.00	5,096.00	
Totals	182.00		5,096.00	
Total Labor				**5,096.00**

Reimbursable Expenses

Verizon Wireless

10/27/10 Verizon Wireless	Christine Russell		54.74	
Total Reimbursables			**54.74**	**54.74**

Additional Fees

Overhead	129.32% of 5,096.00		6,590.15	
Total Additional Fees			**6,590.15**	**6,590.15**

Billing Limits	**Current**	**Prior**	**To-Date**
Fees	1,168.62	2,568.39	3,737.01
Limit			29,173.83
Remaining			25,436.82
Labor	5,096.00	11,200.00	16,296.00
Limit			128,247.90
Remaining			111,951.90

Please remit to :
Cotter Consulting, Inc., Department 20-1003, P.O. Box 5940, Carol Stream, IL 60197-5940, (P) 630-724-9730

Expenses	54.74	164.50	219.24
Limit			1,820.00
Remaining			1,600.76
Units	0.00	0.00	0.00
Limit			23,760.00
Remaining			23,760.00
Additional Fees	6,590.15	14,483.84	21,073.99
Limit			163,490.42
Remaining			142,416.43

Total this Invoice **$12,909.51**

Outstanding Invoices

Number	Date	Balance
20100563	8/6/10	7,894.63
20100630	9/3/10	10,225.62
20100693	9/29/10	10,296.48
Total		**28,416.73**

Total Now Due **$41,326.24**

Billings to Date

	Current	Prior	Total
Fee	1,168.62	2,568.39	3,737.01
Labor	5,096.00	11,200.00	16,296.00
Expense	54.74	164.50	219.24
Add-on	6,590.15	14,483.84	21,073.99
Totals	**12,909.51**	**28,416.73**	**41,326.24**

Please remit to :
Cotter Consulting, Inc., Department 20-1003, P.O. Box 5940, Carol Stream, IL 60197-5940, (P) 630-724-9730

Billing Backup

Tuesday, November 02, 2010

Cotter Consulting Inc. **Invoice 20100789 Dated 11/2/10** *4:52:39 PM*

Project 2010-037 Metra Construction Management - V3 Metra Contract K91049
Metra Project ET2112

Professional Personnel

		Hours	Rate	Amount	
Russell, Christine	9/27/10	8.00	28.00	224.00	
Russell, Christine	9/29/10	8.00	28.00	224.00	
Russell, Christine	9/30/10	6.00	28.00	168.00	
Russell, Christine	10/1/10	8.00	28.00	224.00	
Russell, Christine	10/4/10	8.00	28.00	224.00	
Russell, Christine	10/5/10	8.00	28.00	224.00	
Russell, Christine	10/6/10	8.00	28.00	224.00	
Russell, Christine	10/7/10	8.00	28.00	224.00	
Russell, Christine	10/8/10	8.00	28.00	224.00	
Russell, Christine	10/11/10	8.00	28.00	224.00	
Russell, Christine	10/12/10	8.00	28.00	224.00	
Russell, Christine	10/13/10	8.00	28.00	224.00	
Russell, Christine	10/14/10	8.00	28.00	224.00	
Russell, Christine	10/15/10	8.00	28.00	224.00	
Russell, Christine	10/19/10	8.00	28.00	224.00	
Russell, Christine	10/20/10	8.00	28.00	224.00	
Russell, Christine	10/21/10	8.00	28.00	224.00	
Russell, Christine	10/22/10	8.00	28.00	224.00	
Russell, Christine	10/25/10	8.00	28.00	224.00	
Russell, Christine	10/26/10	8.00	28.00	224.00	
Russell, Christine	10/27/10	8.00	28.00	224.00	
Russell, Christine	10/28/10	8.00	28.00	224.00	
Russell, Christine	10/29/10	8.00	28.00	224.00	
Totals		182.00		5,096.00	
Total Labor					**5,096.00**

Reimbursable Expenses

Verizon Wireless

14078	10/27/10 Verizon Wireless / Invoice: 2472178544, 10/12/2010	54.74	
Total Reimbursables		**54.74**	**54.74**

Total this report **$5,150.74**

Please remit to :
Cotter Consulting, Inc., Department 20-1003, P.O. Box 5940, Carol Stream, IL 60197-5940, (P) 630-724-9730

Detailed Timesheet for the Period Ending 10/1/10

Friday, October 01, 2010

Cotter Consulting Inc.

1:07:25 PM

Employee CR Russell, Christine

Signed Russell, Christine

Approved

Submitted

Organization INFR.TRAN

			Total Hr	Sat 09/25	Sun 09/26	Mon 09/27	Tue 09/28	Wed 09/29	Thu 09/30	Fri 10/01
Vacation	Vacation									
		Reg	8.00				8.00			
Personal	Personal									
		Reg	2.00						2.00	
2010-037	Metra Construction Management - V3									
PROF	Metra Construction Management - V3									
110		Reg	30.00			8.00		8.00	6.00	8.00
DAILY TOTALS		Reg	40.00			8.00	8.00	8.00	8.00	8.00

Company: V3 Consultants/Illinois

Detailed Timesheet for the Period Ending 10/8/10

Friday, October 08, 2010

Cotter Consulting Inc.

12:30:45 PM

Employee CR Russell, Christine

Signed Russell, Christine

Approved

Submitted

Organization INFR.TRAN

			Total Hr	Sat 10/02	Sun 10/03	Mon 10/04	Tue 10/05	Wed 10/06	Thu 10/07	Fri 10/08
2010-037	Metra Construction Management - V3								Company: V3 Consultants/Illinois	
PROF	Metra Construction Management - V3									
110		Reg	40.00			8.00	8.00	8.00	8.00	8.00
DAILY TOTALS		Reg	40.00			8.00	8.00	8.00	8.00	8.00

Detailed Timesheet for the Period Ending 10/15/10

Friday, October 15, 2010

Colter Consulting Inc.

1:12:11 PM

Employee CR Russell, Christine

Signed Russell, Christine

Approved

Submitted

Organization INFR.TRAN

			Total Hr	Sat 10/09	Sun 10/10	Mon 10/11	Tue 10/12	Wed 10/13	Thu 10/14	Fri 10/15
2010-037	Metra Construction Management - V3									Company: V3 Consultants/Illinois
PROF	Metra Construction Management - V3									
110		Reg	40.00			8.00	8.00	8.00	8.00	8.00
DAILY TOTALS		Reg	40.00			8.00	8.00	8.00	8.00	8.00

Detailed Timesheet for the Period Ending 10/22/10

Friday, October 22, 2010

Colter Consulting Inc.

9:58 31 AM

Employee CR Russell, Christine

Signed Russell, Christine

Approved

Submitted

Organization INFR.TRAN

			Total Hr	Sat 10/16	Sun 10/17	Mon 10/18	Tue 10/19	Wed 10/20	Thu 10/21	Fri 10/22
Vacation	Vacation									
		Reg	8.00			8.00				
2010-037	Metra Construction Management - V3									
PROF	Metra Construction Management - V3									
110		Reg	32.00				8.00	8.00	8.00	8.00
DAILY TOTALS		Reg	40.00			8.00	8.00	8.00	8.00	8.00

Company: V3 Consultants/Illinois

Detailed Timesheet for the Period Ending 10/29/10

Thursday, October 28, 2010

Cotter Consulting Inc.

3:48:00 PM

Employee CR Russell, Christine

Signed

Russell, Christine

Approved

Submitted

Organization INFR.TRAN

			Total Hr	Sat 10/23	Sun 10/24	Mon 10/25	Tue 10/26	Wed 10/27	Thu 10/28	Fri 10/29
2010-037	Metra Construction Management - V3								Company: V3 Consultants/Illinois	
PROF	Metra Construction Management - V3									
110		Reg	40.00			8.00	8.00	8.00	8.00	8.00
DAILY TOTALS		Reg	40.00			8.00	8.00	8.00	8.00	8.00

Summary for Russell Christine: 773–617–3341

10-037

Your Calling Plan

Nationwide Business Talk 450
$44.99 monthly access charge
450 monthly allowance minutes
$.25 per minute after allowance

Friends & Family

Pay As You Use Megabyte Data
$1.99 per megabyte

Push to Talk Service
$5.00 monthly access charge
Unlimited monthly minutes

Beginning on 09/30/09:
10% Access Discount

M2M National Unlimited
Unlimited monthly Mobile to Mobile

UNL Night & Weekend Min
Unlimited monthly OFFPEAK

Have more questions about your charges? Get details for all your Usage Charges at vzw.com/mybusinessaccount.

Charges

Monthly Access Charges	
Nationwide Business Talk 450 10/13 – 11/12	44.99
10% Access Discount 10/13 – 11/12	–4.50
Push to Talk Service 10/13 – 11/12	5.00
	$45.49

Usage Charges

Voice		Allowance	Used	Billable	Cost
SharePlan	*minutes*	450 (shared)	56	--	--
Friends & Family	*minutes*	--	14	--	--
Mobile to Mobile	*minutes*	unlimited	17	--	--
Total Voice					$.00
Messaging					
Text – Rcv'd	*messages*	--	1	1	.20
Total Messaging					$.20
Total Usage Charges					$.20

Verizon Wireless' Surcharges	
Fed Universal Service Charge	1.15
Regulatory Charge	.13
Administrative Charge	.83
	$2.11

Taxes, Governmental Surcharges and Fees	
IL State E911 Fee	.73
IL State Telecom Excise Tax	3.34
Darien MTT	2.87
	$6.94

Total Current Charges for 773–617–3341 $54.74

Project C9178.C2

cotter Bill Grp X103

INVOICE

December 1, 2010
Invoice No: 20100918

Dawn Hannigan
V3 Consultants/Illinois
7325 Janes Avenue
Woodridge, IL 60517

Project Manager George Panages

Project 2010-037 Metra Construction Management - V3 Metra Contract K91049
Metra Project ET2112

Professional Services from October 30, 2010 to November 26, 2010

Professional Personnel

	Hours	Rate	Amount	
Russell, Christine	108.50	28.00	3,038.00	
Totals	108.50		3,038.00	
	Overhead	129.32	3,928.74	
	Profit	10%	696.67	
Total Labor				7,663.41

Reimbursable Expenses

Verizon Wireless

11/26/10	Verizon Wireless	C.Russell	54.97	
	Total Reimbursables		54.97	54.97

Total this Invoice $7,718.38

Please remit to :
Cotter Consulting, Inc., Department 20-1003, P.O. Box 5940, Carol Stream, IL 60197-5940, (P) 630-724-9730

Outstanding Invoices

Number	Date	Balance
20100563	8/6/10	7,894.63
20100630	9/3/10	10,225.62
20100693	9/29/10	10,296.48
20100789	11/2/10	12,909.51
Total		**41,326.24**

Total Now Due **$49,044.62**

Please remit to :
Cotter Consulting, Inc., Department 20-1003, P.O. Box 5940, Carol Stream, IL 60197-5940, (P) 630-724-9730

Detailed Timesheet for the Period Ending 11/5/10

Friday, November 05, 2010

Cotter Consulting Inc.

11:39:59 AM

Employee CR Russell, Christine

Signed Russell, Christine

Approved

Submitted

Organization INFR.TRAN

			Total Hr	Sat 10/30	Sun 10/31	Mon 11/01	Tue 11/02	Wed 11/03	Thu 11/04	Fri 11/05
2010-037	Metra Construction Management - V3									
PROF	Metra Construction Management - V3									
110		Reg	40.00			8.00	8.00	8.00	8.00	8.00
DAILY TOTALS		Reg	40.00			8.00	8.00	8.00	8.00	8.00

Company: V3 Consultants/Illinois

Detailed Timesheet for the Period Ending 11/12/10

Friday, November 12, 2010

Cotter Consulting Inc.

9:42:07 AM

Employee CR Russell, Christine

Signed Russell, Christine

Approved

Submitted

Organization INFR.TRAN

			Total Hr	Sat 11/06	Sun 11/07	Mon 11/08	Tue 11/09	Wed 11/10	Thu 11/11	Fri 11/12
Vacation	Vacation									
		Reg	8.00						8.00	
2010-037	Metra Construction Management - V3								Company: V3 Consultants/Illinois	
PROF	Metra Construction Management - V3									
110		Reg	32.00			8.00	8.00	8.00		8.00
DAILY TOTALS		Reg	40.00			8.00	8.00	8.00	8.00	8.00

Detailed Timesheet for the Period Ending 11/19/10

Friday, November 19, 2010

Cotter Consulting Inc.

11:21:16 AM

Employee CR Russell, Christine

Signed Russell, Christine

Approved

Submitted

Organization INFRTRAN

			Total Hr	Sat 11/13	Sun 11/14	Mon 11/15	Tue 11/16	Wed 11/17	Thu 11/18	Fri 11/19
Personal		Personal								
		Reg	1.00			1.00				
2010-037		Metra Construction Management - V3								
PROF		Metra Construction Management - V3								
	110	Reg	36.50			6.50	6.00	8.00	6.00	8.00
OVERHEAD		Misc. Overhead								
TR		Misc. Overhead Transportation								
	110	Reg	1.50						1.50	
ADMINISTRATION		Administration								
TR		Administration Transportation								
	110	Reg	1.00						1.00	
DAILY TOTALS		Reg	40.00			7.50	8.00	8.00	8.50	8.00

Company: V3 Consultants/Illinois

verizon wireless

Invoice Number	Account Number	Date Due	Page
2487143070	686056074-00001	12/07/10	71 of 74

Summary for Russell Christine: 773-617-3341

10-037

Your Calling Plan

Nationwide Business Talk 450
$44.99 monthly access charge
450 monthly allowance minutes
$.25 per minute after allowance

Friends & Family

Pay As You Use Megabyte Data
$1.99 per megabyte

Push to Talk Service
$5.00 monthly access charge
Unlimited monthly minutes

Beginning on 09/30/09:
10% Access Discount

M2M National Unlimited
Unlimited monthly Mobile to Mobile

UNL Night & Weekend Min
Unlimited monthly OFFPEAK

Have more questions about your charges? Get details for all your Usage Charges at vzw.com/mybusinessaccount.

Charges

Monthly Access Charges

Nationwide Business Talk 450 11/13 – 12/12	44.99
10% Access Discount 11/13 – 12/12	-4.50
Push to Talk Service 11/13 – 12/12	5.00
	$45.49

Usage Charges

Voice		Allowance	Used	Billable	Cost
SharePlan	*minutes*	450 (shared)	6	--	--
Mobile to Mobile	*minutes*	unlimited	13	--	--
Total Voice					$.00
Messaging					
Text – Rcv'd	*messages*	--	2	2	.40
Total Messaging					$.40
Total Usage Charges					$.40

Verizon Wireless' Surcharges	
Fed Universal Service Charge	1.15
Regulatory Charge	.13
Administrative Charge	.83
	$2.11
Taxes, Governmental Surcharges and Fees	
IL State E911 Fee	.73
IL State Telecom Excise Tax	3.36
Darien MTT	2.88
	$6.97
Total Current Charges for 773-617-3341	$54.97

Control #:50000004-0000021B

Order

September 11, 2009

Memorandum

To: File

From: E.H. Remus EHR
Sr. Contracting Agent
Professional Services & Contracts

Subject: Contract No. K91049
Construction Management Services for U.P. North Line Bridges
V3 Companies of Illinois, Ltd.
Not-to-Exceed $8,400,000.00

Cost Review

The attached Wage and Overhead Rates submitted for the subject contract have been reviewed and most appear to be acceptable. The hourly Wage Rates for the Prime and some Subconsultants are within the range of those from other Metra consultants performing similar tasks.

Cotter Consulting, Inc. has a 2010 rate that exceeds the $70.00/hour maximum and Geoservices, Inc. has five (5) rates which are not allowable under this contract.

The chart below lists the Prime and Subconsultant Overhead Rates, which are provisionally approved by IDOT or WDOT per copies of the attached letters:

Company Name	Overhead Rate	Date of IDOT or *WDOT Letter
V3 Companies of Illinois, Ltd.	163.0%	January 23, 2009
Alfred Benesch & Co.	157.26%	September 18, 2008
Cotter Consulting, Inc.	127.48%	May 7, 2009
GeoServices, Inc.	199.83%	May 22, 2009
Hanno Webber & Associates	149.60%	*WDOT - May 21, 2007

Attachments

EHR/jrz

cc: C. Gamboa, Professional Services/Contracts
J. L. Lorenzini, Engineering
E. Fernandes, Audit
Vendor File

Metra is the registered service mark for the Northeast Illinois Regional Commuter Railroad Corporation.

K91049

FOR PROFESSIONAL AND CONSULTING SERVICES AGREEMENT
BLANKET CONTRACTS

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
D/B/A METRA
547 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60661

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D. COPYRIGHT AND RIGHTS IN DATA 14

10. INDEMNIFICATION AND WAIVER 14

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E. DEMAND FOR ARBITRATION 20
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AGREEMENT

FOR PROFESSIONAL AND CONSULTING SERVICES
BLANKET CONTRACTS

This Agreement is entered into this 25TH day of SEPTEMBER, 2009 in Chicago, Illinois, by and between the Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra, Metopolitan Rail ("**Metra**"); a public corporation under Illinois law, and V3 Companies of Illinois, Ltd. ("**Consultant**"), having offices located at 7325 Janes Avenue, Woodridge, IL 60517. Consultant and Metra are sometimes collectively referred to as "**Parties.**" In consideration of the promises and agreements set forth, the Parties agree:

1. SCOPE AND DESCRIPTION OF SERVICES.

Consultant will perform the following services ("**Work**"): Provide Blanket Professional Construction Management Services for Union Pacific North Line Bridges.

2. COMPENSATION.

The total amount of this blanket Agreement including all individual tasks, shall not exceed $8,400,000.00.

Once specific tasks have been assigned, Metra agrees to pay, and Consultant agrees to accept the prices stipulated on the cost or price schedule, which is attached as Exhibit 2. With respect to the overhead rate described on the attached schedule, Consultant will list the immediate prior year overhead rate. The immediate prior year rate will be a provisional rate until audited by and/or accepted by Metra. Consultant may apply the provisional rate until such time as Metra's Audit Department audits and/or accepts Consultant's actual individual yearly overhead rate as computed under the Illinois Department of Transportation guidelines for computation of overhead rates. Once Metra audits and /or accepts the provisional overhead rate, the actual overhead rate for each year will be applied to each year's respective billings. Payments made using the provisional overhead rate will be subject to change and adjusted to conform with the audited and/or accepted overhead rate for each year. Consultant shall be paid only for the actual Work performed at the prescribed rates during the preceding billing period, not to exceed the percentage of the Work completed as of the end of the billing period. The full payment for each task shall not exceed the total price as stated in the applicable Metra Form 4400 for that particular task(s) assigned ("**Total Price**"). The Metra Form 4400, agreed to by Metra and submitted by Consultant in response to Metra's request for a specific task, and the subsequent Notice to Proceed (defined below), are incorporated into this Agreement by reference. The Total Price also includes the cost of all applicable taxes (where Metra is not exempt), bonds, if required, and other charges of every kind and nature. The Total Price shall not include, and Metra shall not pay, taxes or fees from which Metra is exempt. Metra is exempt from various federal taxes, all state and unit of local government taxes, and registration and license fees. Consultant shall promptly notify Metra, and afford it the opportunity, before payment of any taxes, to contest said claims in the manner and to the extent it may elect, and to settle or satisfy such claims.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES RECITED BELOW:

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION D/B/A METRA

RG
BY _____

PHILIP A. PAGANO
PRINT NAME

TITLE EXECUTIVE DIRECTOR

ATTEST

BY _____
DATE 9/25/09

TITLE ASSISTANT SECRETARY TO THE BOARD

CONSULTANT

BY _____

LOUIS J. GALLUCCI
PRINT NAME

TITLE VICE PRESIDENT

ATTEST

BY _____ 9/1/09
DATE

TITLE President

K91048

FOR PROFESSIONAL AND CONSULTING SERVICES AGREEMENT
BLANKET CONTRACTS

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
D/B/A METRA
547 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60661

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E. SET-OFF RIGHTS 22
F. SEVERABILITY 22
G. WAIVER 22
H. CONSTRUCTION 23

K 91048

AGREEMENT

FOR PROFESSIONAL AND CONSULTING SERVICES BLANKET CONTRACTS

This Agreement is entered into this 1 ST day of APRIL, 2010 in Chicago, Illinois, by and between the Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra, Metopolitan Rail ("**Metra**"), a public corporation under Illinois law, and AECOM USA, Inc. ("**Consultant**"), having offices located at 303 E. Wacker Drive, Suite 600, Chicago, IL 60601. Consultant and Metra are sometimes collectively referred to as "**Parties**." In consideration of the promises and agreements set forth, the Parties agree:

1. SCOPE AND DESCRIPTION OF SERVICES.

Consultant will perform the following services ("**Work**"): Provide Blanket Professional Construction Management Services related to the BNSF Belmont Road Grade Separation in Downers Grove, IL.

2. COMPENSATION.

The total amount of this blanket Agreement including all individual tasks, shall not exceed $2,500,000.00.

Once specific tasks have been assigned, Metra agrees to pay, and Consultant agrees to accept the prices stipulated on the cost or price schedule, which is attached as Exhibit 2. With respect to the overhead rate described on the attached schedule, Consultant will list the immediate prior year overhead rate. The immediate prior year rate will be a provisional rate until audited by and/or accepted by Metra. Consultant may apply the provisional rate until such time as Metra's Audit Department audits and/or accepts Consultant's actual individual yearly overhead rate as computed under the Illinois Department of Transportation guidelines for computation of overhead rates. Once Metra audits and /or accepts the provisional overhead rate, the actual overhead rate for each year will be applied to each year's respective billings. Payments made using the provisional overhead rate will be subject to change and adjusted to conform with the audited and/or accepted overhead rate for each year. Consultant shall be paid only for the actual Work performed at the prescribed rates during the preceding billing period, not to exceed the percentage of the Work completed as of the end of the billing period. The full payment for each task shall not exceed the total price as stated in the applicable Metra Form 4400 for that particular task(s) assigned ("**Total Price**"). The Metra Form 4400, agreed to by Metra and submitted by Consultant in response to Metra's request for a specific task, and the subsequent Notice to Proceed (defined below), are incorporated into this Agreement by reference. The Total Price also includes the cost of all applicable taxes (where Metra is not exempt), bonds, if required, and other charges of every kind and nature. The Total Price shall not include, and Metra shall not pay, taxes or fees from which Metra is exempt. Metra is exempt from various federal taxes, all state and unit of local government taxes, and registration and license fees. Consultant shall promptly notify Metra, and afford it the opportunity, before payment of any taxes, to contest said claims in the manner and to the extent it may elect, and to settle or satisfy such claims.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES RECITED BELOW:

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION D/B/A METRA

BY _____

PHILIP A. PAGANO
PRINT NAME

TITLE EXECUTIVE DIRECTOR

ATTEST

BY _____
DATE 4/1/10

TITLE ASSISTANT SECRETARY TO THE BOARD

CONSULTANT

BY _____

MARK M. LUCAS
PRINT NAME

TITLE VICE PRESIDENT

ATTEST

BY _____
DATE 9/4/09

TITLE Assistant Secretary

EXHIBIT 2

AECOM
303 East Wacker Drive, Suite 600, Chicago, IL 60601
T 312.938.0300 F 312.938.1109 www.aecom.com

September 4, 2009

Mr. Carlos Gamboa, C.P.M.
Department Head
Professional Services & Contracts
Metra
547 W. Jackson Blvd.
Chicago, Illinois 60661

Attn: Mr. Ed Remus

RE: Metra RFP No. 01793
Blanket Construction Management Services
BNSF\Belmont Road Grade Separation

Dear Mr. Remus,

In accordance with your pre-award notice dated August 28, 2009 for the referenced project, AECOM is pleased to submit two (2) signed contracts, an Employee Compensation Schedule and the latest overhead rates for AECOM, URS, Wight, APS Consulting, CivCon Services and Wang Engineering. The salary rates detailed in the Employee Compensation Schedules represent existing rates and are current through December 31, 2009. Average salary increases are estimated at 5%, typically beginning January 1, 2010.

If you have any questions or need additional information, please contact me at 312-373-6853 or joe.catalano@aecom.com.

Sincerely,

Joseph R. Catalano, P.E.
Associate Vice President

Enclosures

c: Amar Rajpurkar
Mark Lucas
Mike Sweeney

C:\Construction\Metra\2009 Belmont CM Services\Agreement Transmittal Letter_09-04-09.Doc

2009 SEP -9 A 10: 42
MATERIAL MGMT.

EXHIBIT 2

MPLOYEE COMPENSATION SCHEDULE
2009 DIRECT HOURLY WAGE RATES
Metra RFP No. 01793

Name	Classification	Hourly Rate		
AECOM				
Joe Catalano	Project Director	$	77.66	for 2009 - salary adjustments on January 1 of every year
Jim Powers	Project Manager	$	51.26	for 2009 - salary adjustments on January 1 of every year
Duane Buchko	QA\QC	$	68.58	for 2009 - salary adjustments on January 1 of every year
Scott Wheeler	Constructability	$	67.14	for 2009 - salary adjustments on January 1 of every year
Peter Josefchak	Metra Liaison\Agenvy Coordination	$	89.24	for 2009 - salary adjustments on January 1 of every year
Dennis Gary	Metra Liaison\Agenvy Coordination	$	113.61	for 2009 - salary adjustments on January 1 of every year
Peter Jensen	Construction Inspection	$	52.43	for 2009 - salary adjustments on January 1 of every year
Greg Dieter	Construction Inspection	$	38.31	for 2009 - salary adjustments on January 1 of every year
Bob Sturm	Project Controls	$	45.20	for 2009 - salary adjustments on January 1 of every year
Michael Myrieckes	Project Controls	$	43.35	for 2009 - salary adjustments on January 1 of every year
Brad Radovich	Structural Lead	$	60.01	for 2009 - salary adjustments on January 1 of every year
Woody Brock	Structural Engineer	$	49.72	for 2009 - salary adjustments on January 1 of every year
Matt Pregmon	Structural Engineer	$	50.32	for 2009 - salary adjustments on January 1 of every year
Frank Noonan	Mechanical Engineer	$	71.57	for 2009 - salary adjustments on January 1 of every year
Bill Stermer	Electrical Engineer	$	57.01	for 2009 - salary adjustments on January 1 of every year
Todd Lentz	Signals Engineer	$	33.16	for 2009 - salary adjustments on January 1 of every year
Patrick Bagliere	Surveying	$	46.83	for 2009 - salary adjustments on January 1 of every year
Wang Engineering				
Jerry Wang	Geotechnical	$	24.04	for 2009 - salary adjustments on January 1 of every year
Bob Flood	Materials Testing	$	50.48	for 2009 - salary adjustments on January 1 of every year
Koshy Jacob	Laboratory Testing	$	48.10	Includes $17.90 Cook County Prevailing Wage Fringe
Wight & Company				
Matt Shelton	Canopy Inspection	$	40.37	for 2009 - salary adjustments on April 1 of every year
URS Corporation				
Michael Delemont	Construction Inspection	$	37.44	for 2009 - salary adjustments on January 1 of every year
Don Yetter	Shop Drawing Review	$	67.08	for 2009 - salary adjustments on January 1 of every year
Randel Zilz	Track Engineer	$	31.20	for 2009 - salary adjustments on January 1 of every year
Jim LeVan	Civil\Traffic Signals Engineer	$	47.36	for 2009 - salary adjustments on January 1 of every year
Dan Duzan	Electrical Engineer	$	48.08	for 2009 - salary adjustments on January 1 of every year
APS Consulting				
Saurabh Dixit	Construction Inspection	$	36.00	for 2009/2010 - salary adjustments on September 1 of every year
CivCon Services				
Adel Gholeh	Construction Inspection	$	35.20	for 2009 - salary adjustments on January 1 of every year

Metra SM

September 10, 2009

Memorandum

To: File

EHR

From: E. H. Remus

Subject: Construction Mgmt. Svcs. For Belmont Road Grade Separation
Aecom USA, Inc. - $2,500,000.00
K 91048

Cost/Price Review

The attached hourly wage rates and overhead rates have been reviewed. The over head rates for the prime and -5- subconsultants have all been preliminarily approved by recent IDOT audits (copy of IDOT letters attached).

The hourly wage rates from AECOM exceeding $70.00/hr. are not acceptable under this contract. All other submitted rates appear to be fair & reasonable.

EHR/jz
Attachments

cc: J. L. Lorenzini, Engineering
C. Gamboa, Prof. Svcs./Contracts
E. Fernandes, Audit

Metra is the registered service mark for the Northeast Illinois Regional Commuter Railroad Corporation.

AECOM

AECOM
303 East Wacker Drive
Suite 600
Chicago, IL 60601
www.aecom.com

312 938 0300 tel
312 938 1109 fax

May 17, 2010

Mr. Ken Diemer
Metra
547 West Jackson Blvd.
Chicago, IL 60661

Re: Metra Contract K91048 Blanket CM Services
Task No. 1 – BNSF Belmont Grade Separation Work

Dear Mr. Diemer:

Please find attached the proposed Scope of Services and 4400 form for the BNSF Belmont Grade Separation Work.

If you have any questions or need additional information, please contact me at 312-373-6853 or joe.catalano@cte.aecom.com. We look forward to working with you on this project.

Sincerely,

Joseph R. Catalano, P.E.
Associate Vice President

c: Bill Archer, Metra
Jim Powers, AECOM
File

H:\Construction\Metra\2010 Belmont CM Services\K91048_4400 Transmittal Letter - Task 1.Doc

Approved: _____
J.L. Lorenzini, Chief Engineering Officer

Approved: _____
W.K. Tupper, Executive Director

AECOM

Contract K91048
Metra Blanket Construction Management Services
Task 1 – BNSF Belmont Avenue Grade Separation Work

Scope of Services

CTE will provide administrative, management and related services, as required, to coordinate the work of the Contractor with the activities and responsibilities of Metra to complete the project in accordance with the Construction Documents. The Construction Manager shall not be responsible for construction means, methods, techniques, sequences and procedures employed by the Contractor in performance of the contract. The Contractor shall be responsible for ensuring its work is completed in conformance with its contract with Metra. The extent of the duties, responsibilities and limitations of authority of the Construction Manager as a representative of Metra during construction shall not be modified or extended without the written consent of Metra.

Based on information discussed at the pre-construction meeting on March 25, 2010 with Metra and Contractor representatives, CTE has developed a scope of services and staffing plan to accommodate the schedule discussed for the proposed work. The following assumptions were made in developing the plan:

A) The BNSF Belmont Avenue Grade Separation Work in Downers Grove, IL is anticipated to begin April 1, 2010. The CM Services contract completion date is December 31, 2012.

B) CTE will perform Construction Management and Inspection including but not limited to the following:

   a. Review and monitor
      i. Work progress
      ii. Two-week look-ahead schedule
      iii. Overall construction schedule
      iv. Delivery schedules
      v. Request for information (RFI) items
      vi. Submittals status
      vii. Maintenance of quality standards
      viii. Contract modifications
      ix. Approved construction budget

   b. Required coordination between Metra, the general contractor, subcontractors, and any other agencies or railroads
   c. Interface with the general contractor
   d. Report to Metra observations made by CTE
   e. Upon request from Metra, recommend options Metra may take when a non-performing party is not complying with the construction documents
   f. Submit monthly progress reports and daily work progress reports
   g. Update the Project Management Plan and Quality Management Plan to reflect actual construction administration procedures being implemented
   h. Coordinate project closeout procedures and requirements

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

For use of this form, see METRA Procedure PU-06 or PU-08

m is to be used as provided under METRA procedures. It will be executed and submitted with proposals in response to "Requests sals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis as required, contact the purchasing office for further instructions.

REQUEST NO. 1

NAME AND ADDRESS OF OFFERER

AECOM USA, Inc. - 303 E. Wacker Dr., Chicago, Illinois 60601

TITLE OF PROJECT : K91048

BNSF Belmont Avenue Grade Separation - Downers Grove

DETAIL DESCRIPTION		ESTIMATED HOURS	AVERAGE RATE/HOUR	TOTAL EST. COST
1. DIRECT LABOR (Specify)				
1000 Construction Services		8860	$55.00	$487,300.00
				$0.00
				$0.00
TOTAL DIRECT LABOR				$487,300.00
JRDEN (Overhead Rate - Specify)	BURDEN RATE	X BASE =	BURDEN ($)	
Burden - Overhead - Admin.	161.10%	$487,300.00		$785,040.30
TOTAL BURDEN				$785,040.30
3. DIRECT MATERIAL				
Miscellaneous (Allowance)			$425.67	
Video camera & pictures				
TOTAL MATERIAL				$425.67
4. SPECIAL TESTING (Including field work at Government installation)				
TOTAL SPECIAL TESTING				
5. SPECIAL EQUIPMENT (If direct charge - Specify in Exhibit B on Page 2)				
6. TRAVEL (If direct charge)				
a. TRANSPORTATION				
b. PER DIEM OR SUBSISTENCE				
TOTAL TRAVEL				$0.00
7. CONSULTANTS (Identify - Purpose - Rate)				
TOTAL CONSULTANTS				
8. SUBCONTRACTS and/or DBE SUBCONTRACTOR (Specify in Exhibit A on Page 2)				$1,100,000.00
OTHER DIRECT COSTS (Specify in Exhibit B on Page 2 - explain royalty costs, if any)				
. (LINE #1 and LINE #2) TOTAL DIRECT COST AND BURDEN				$1,272,340.30
GENERAL AND ADMINISTRATIVE EXPENSE (Rate %) State basis for proposed amount				
TOTAL ESTIMATED COST				$2,372,765.97
. FIXED FEE OR PROFIT (10% of 1 and 2 above)				$127,234.03
4. TOTAL ESTIMATED COST AND FIXED FEE OR PROFIT				$2,500,000.00

ESTIMATE OF ENGINEERING SERVICES
FOR
AECOM USA, INC.
METRA BURLINGTON NORTHERN & SANTA FE LINE
GRADE SEPARATION OF BELMONT ROAD
IN DOWNERS GROVE, ILLINOIS
METRA CONTRACT NO. K91048

TASK 1	HOURS
1. Project Management 36 months	9000
2. Testing	1200
3. Construction Inspection	4800
4. Structural Review	1500
5. Quality Management and Oversight	500
Total Hours	18000

Estimate of Cost:

Assume: Average hourly rate for all engineering disciplines of $50.00 per hour.
Average Overhead Burden Rate of 160%.

Direct Labor Costs	18,000 hrs. x $50.00/hr.	$ 900,000.00
Overhead Burden	Direct Labor x 160%	$ 1,440,000.00
Fee 10%	(Direct Labor + Overhead Burden) x 10%	$ 234,000.00
TOTAL ESTIMATED COST		$2,574,000.00

5. OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION

GOVERNMENTAL AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
yearly overhead Audit - Provisional	4/30/2009	10/1/2007 to 9/30/2008

B. NAME AND ADDRESS OF GOVERNMENT AGENCY	C. DO YOUR CONTRACTS PROVIDE NEGOTIATED OVERHEAD RATES?
Illinois Dept. of Transportation 2300 S.Dirksen Parkway Springfield,Il 62764	x No _____ Yes

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	TOTAL INDIRECT EXPENSE POOL	BASE FOR TOTAL

16. EXHIBIT A - SUBCONTRACT INFORMATION (If more space is needed, use blank sheets, identifying item number)

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	SUBCONTRACT AMOUNT
APS Consulting, Inc. Chicago, IL	Construction Inspection	DBE	$ 275,000.00
CivCon Services, Chicago, IL	Construction Inspection	DBE	$ 350,000.00
URS, Inc, Chicago, IL	Construction Inspection		$ 375,000.00
Wight & Company, Darien, IL	Construction Inspection		$ 100,000.00

7. EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space is needed, use blank sheets, identifying item number)

TOTAL OTHER DIRECT COSTS	

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he _____ has, _____ has not, employed or retained any company or person (other than a full-time bona fide employee working solely for one bidder) to solicit or secure his contract, and (b) that he _____ has, _____ has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED IN
_____ 500 and Under _____ Over 500 _____ Over 750 _X_ Over 1,000	Delaware

ATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF CONTRACTOR

CONSULTANT: AECOM USA	CONTR. NO: K86588	METRA PROJECT: K91048	P.E. NO:	06/15/10	INVOICE NO: 60155656-02
CONSULTANT ADDRESS:	1178 PAYSPHERE CIRCLE	DESCRIPTION:	BNSF Belmont Ave Grade Separation - Downers Grove	INVOICE PERIOD:	START: 05/01/10
	CHICAGO, IL 60674	TYPE OF SERVICES:	Grade Separation		END: 05/28/10
CONTRACT AMOUNT:	$ 2,500,000.00	PROJECT AMOUNT:	$ 2,500,000.00	INVOICE AMOUNT:	$ 71,441.21
MODIFICATIONS:	$ -	ADDITIONAL AMOUNT:	$ -	ACCOUNT CODES:	
ORIGINAL AMOUNT:	$ 2,500,000.00	ORIGINAL AMOUNT:	$ 2,500,000.00		
END DATE:		PROJECT END DATE:			

6/28/10

METRA APPROVAL BOX

BATCH # R19 VO # XD6 9152
VENDOR # 000 4327 607
1099 AREA/ACCT/REF:
Ed 2933 5710 3003
HNR REC P.O. # K 91048
TRM/DUE 25 DISC. AMT.
ATT SP CK G/L ACT H
MAN GK # QK CK #
P.O./REL VER CLK ACC. 6/30-24-10
SUPRV. APPR. 6/29/10

APPROVED
ENGINEERING
ON 7-1-10
ACCT.
BY ~~7-1-10~~ [illegible]

PROJECT APPROVAL BOX

% OF WORK COMPLETED TO DATE: 3.12%

% OF WORK COMPLETED LAST PERIOD: 0.26%

FIRM PROJECT MANAGER: [signature] 6/18/10

APPROVAL/DATE

METRA PROJECT MANAGER: JOE OTT

APPROVAL/DATE

ACCOUNTS PAYABLE
2010 JUN 22 P 2:01

CONSULTANT: AECOM USA	CONTR. NO: K86588	METRA PROJECT: K91048	P.E. NO:	06/15/10	INVOICE NO: 60155656-02
CONSULTANT ADDRESS:	1178 PAYSPHERE CIRCLE	DESCRIPTION:	BNSF Belmont Ave Grade Separation - Downers Grove	INVOICE PERIOD	START: 05/01/10
	CHICAGO, IL 60674	TYPE OF SERVICES:	Grade Separation		END: 05/28/10
CONTRACT AMOUNT:	$ 2,500,000.00	PROJECT AMOUNT:	$ 2,500,000.00	INVOICE AMOUNT:	$ 71,441.21
MODIFICATIONS	$ -	ADDITIONAL AMOUNT:	$ -	ACCOUNT CODES:	
ORIGINAL AMOUNT	$ 2,500,000.00	ORIGINAL AMOUNT	$ 2,500,000.00		
END DATE		PROJECT END DATE:			

METRA APPROVAL BOX

PROJECT APPROVAL BOX

% OF WORK COMPLETED TO DATE: 3.12%

% OF WORK COMPLETED LAST PERIOD: 0.26%

FIRM PROJECT MANAGER: 6/18/10

APPROVAL/DATE

METRA PROJECT MANAGER: JOE OTT

APPROVAL/DATE

CONTINUATION PAGE -

WORK ACCOMPLISHED THIS PERIOD	WORK SCHEDULED NEXT PERIOD
LIST TASKS: % COMPLETE	LIST TASKS:
	PROJECTED COST & SCHEDULE PROBLEMS
COST & SCHEDULE PROBLEMS THIS PERIOD	

DIRECT LABOR

A	B	C	D	E	F	G	H	I
DETAILS	HOURS	RATES	4400 COSTS	BILLED TO DATE	PREVIOUSLY BILLED	CURRENT INVOICE AMOUNT	PROJECT BALANCE	% COMPL
Labor	8,860.0	$ 55.00	$ 487,300.00	$ 21,919.48	$ 2,299.00	$ 19,620.48	$ 465,380.52	4.50%

BLANKET CONTRACT INFORMATION					DBE INFORMATION			
A PROJECT DESCRIPTION	B 4400($)	C % COMPL	D EXPENDED AMOUNT	E REMAINING AMOUNT	F VENDOR	G 4400($)	H EXPENDED AMOUNT	I % COMPL
BNSF Belmont Ave Grade Separation - Downer	$2,500,000.00	3.12%	$ 78,044.17	$ 2,421,955.83	APS CONSULTING	$ 350,000.00	$ -	0.00%
					CIVCON SERVICES	$ 275,000.00	$ 14,717.22	5.35%
	$ -		$ -	$ -	URS	$ 375,000.00	$ -	0.00%
	$ -		$ -	$ -	Wight	$ 10,000.00	$ -	0.00%
	$ -		$ -	$ -		$ -	$ -	
	$ -		$ -	$ -		$ -	$ -	
	$ -		$ -	$ -		$ -	$ -	
	$ -		$ -	$ -		$ -	$ -	
	$ -		$ -	$ -		$ -	$ -	
	$ -		$ -	$ -		$ -	$ -	
	$ -		$ -	$ -		$ -	$ -	
	$ -		$ -	$ -		$ -	$ -	

BLANKET CONTRACT SUMMARY

1. CONTRACT AMOUNT	$ 2,500,000.00
2. OBLIGATED TO DATE:	$ 2,500,000.00
3. % OBLIGATED TO DATE:	100.00%
4. UNOBLIGATED FUNDS	-
5. EXPENDED TO DATE:	$ 78,044.17
6. UNEXPENDED TO DATE:	$ 2,421,955.83

CONTRACT DBE SUMMARY

1. CONTRACT AMOUNT:	$ 1,100,000.00
2. OBLIGATED TO DATE	$ 1,100,000.00
3. % OBLIGATED TO DATE	100.00%
4. UNOBLIGATED TO FUNDS	-
5. EXPENDED TO DATE	$ 14,717.22
6. UNEXPENDED TO DATE	$ 1,085,282.78

Total Project Summary

A	B	C	D	E	F	G	H	I
SUMMARY			4400 COSTS	BILLED TO DATE	PREVIOUSLY BILLED	CURRENT INVOICE AMOUNT	PROJECT BALANCE (D-F-G)	% COMPL
DIRECT LABOR			$ 487,300.00	$ 21,919.48	$ 2,299.00	$ 19,620.48	$ 465,380.52	4.50%
BURDEN		161.10%	$ 785,040.30	$ 35,312.28	$ 3,703.69	$ 31,608.59	$ 749,728.02	4.50%
SUBTOTAL DIRECT			$ 1,272,340.30	$ 57,231.76	$ 6,002.69	$ 51,229.07	$ 1,215,108.54	4.50%
PROFIT		10%	$ 127,234.03	$ 5,723.18	$ 600.27	$ 5,122.91	$ 121,510.85	4.50%
OTHER DIRECT:			$ 425.67					
SUBTOTAL OTHER DIRECT:			$ 425.67	$ 372.01	$ -	$ 372.01	$ 53.66	87.39%
SUBCONSULTANTS:								
DBE			$ 625,000.00	$ 14,717.22	$ -	$ 14,717.22	$ 610,282.78	2.35%
OTHER			$ 475,000.00	$ -	$ -	$ -	$ 475,000.00	0.00%
SUBTOTAL SUBCONSULTANTS			$ 1,100,000.00	$ 14,717.22	$ -	$ 14,717.22	$ 1,085,282.78	1.34%
TOTAL PROJECT			$ 2,500,000.00	$ 78,044.17	$ 6,602.96	$ 71,441.21	$ 2,421,955.83	3.12%
LESS PREVIOUS PAYMENT			$ 6,602.96	$ 6,602.96	$ 6,602.96			
BALANCE DUE			$ 2,421,955.83	$ 71,441.21	$ -	$ 71,441.21	$ 2,421,955.83	

METRA CONTRACT NO: K91048

DBE COMPANY	DBE CONTRACT AMOUNT	THIS PERIOD INVOICE AMOUNT OR DATE WHEN DBE WILL START WORK	PREVIOUS PAYMENTS TOTAL TO DBE	AMOUNT REMAINING IN DBE CONTRACT
APS CONSULTING	350,000.00	-		350,000.00
CIVCON SERVICES	275,000.00	14,717.22		260,282.78
URS, INC.	375,000.00	-		375,000.00
WIGHT & COMPANY	100,000.00	-		100,000 00
TOTAL FOR THIS CONTRACT	1,100,000.00	14,717.22	-	1,085,282.78

NOTES:

SEE ATTACHED WORKSHEET FOR DETAILS OF THE PROJECTS UNDER THIS CONTRACT

Timecard Period 01-MAY-10 - 07-MAY-10
Organization 46.CTE INC.USCHG1.1015
Assign Category : A - Full Time
Employee Category : Exempt
Work Schedule :

Employee Name : Catalano, Joseph R
Employee Number : 637459

Project	Task	Type	SAT 01-MAY	SUN 02-MAY	MON 03-MAY	TUE 04-MAY	WED 05-MAY	THUR 06-MAY	FRI 07-MAY	Total
04601070 MidWest Office Administration	1015 OFFICE ADMIN 1015	Regular Hrs	0.00	0.00	3.00	3.00	1.00	2.00	3.00	12.00
04601070 MidWest Office Administration	1018 OFFICE ADMIN 1018	Regular Hrs	0.00	0.00	2.00	2.00	3.00	2.00	3.00	12.00
04601584 MW Hwy Bridge-B&P-IL, IN,OH,MI	0055 Illinois Tollway	Regular Hrs	0.00	0.00	0.00	1.00	0.00	1.00	0.00	2.00
04601793 MW Reg. - Hwy Bridge - G&A	0001 General Overhead	Regular Hrs	0.00	0.00	1.00	1.00	0.00	2.00	2.00	6.00
60039558 Assist Bureau of Admin/Plan	0001 Assist CDOT/ADMIN	Regular Hrs	0.00	0.00	0.00	1.00	0.00	1.00	0.00	2.00
60049849 R-60019596-441027 CONSTR ENGR	0002 ADMIN & MANAGEMENT	Regular Hrs	0.00	0.00	1.00	0.00	1.00	0.00	0.00	2.00
60147816 Mannheim Rd. Brdg. Replacement	01 QA/QC AECOM	Regular Hrs	0.00	0.00	1.00	0.00	1.00	0.00	0.00	2.00
60159656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	0.00	0.00	0.00	0.00	2.00	0.00	0.00	2.00
		Total:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00

Catalano, Joseph R
Employee Signature

Approver For Employee Signature

Lucas, Mark M
Approver Signature

Total Regular Hours : 40.00
Total Overtime Hours : 0.00
Total Non-Worked Hours: 0.00

AECOM TECHNOLOGY RPORATION
Employee T

Timecard Period 01-MAY-10 - 07-MAY-10
Organization 46.CTE INC.USCHG1.1018
Assign Category : A - Full Time
Employee Category : Exempt
Work Schedule :

Employee Name : O'Connor, Kathleen N (Katie)
Employee Number . 657533

Project	Task	Type	SAT 01-MAY	SUN 02-MAY	MON 03-MAY	TUE 04-MAY	WED 05-MAY	THUR 06-MAY	FRI 07-MAY	Total
60131714 106444-WASHINGTON & 75TH STREE	02 RESIDENT ENGINEER	Regular Hrs	0.00	0.00	0.00	8.00	0.00	8.00	0.00	16.00
60155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	0.00	0.00	8.00	0.00	8.00	0.00	8.00	24.00
		Total:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00

O'Connor, Kathleen N (Katie)
Employee Signature

Approver For Employee Signature

Catalano, Joseph R
Approver Signature

Total Regular Hours : 40.00
Total Overtime Hours : 0.00
Total Non-Worked Hours: 0.00

AECOM TECHNOLOGY ?ORATION
Employee Ti

Timecard Period ,1-MAY-10 - 07-MAY-10
Organization 46.CTE INC.USCHGI.1018
Assign Category : A - Full Time
Employee Category : Exempt
Work Schedule :

Employee Name : Powers, James T
Employee Number : 637537

Project	Task	Type	SAT 01-MAY	SUN 02-MAY	MON 03-MAY	TUE 04-MAY	WED 05-MAY	THUR 06-MAY	FRI 07-MAY	Total
60155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	OT Straight Time Hrs	0.00	0.00	1.00	1.00	1.00	1.00	1.00	5.00
60155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00
		Total:	0.00	0.00	9.00	9.00	9.00	9.00	9.00	45.00

Seals, Michelle

Employee Signature

Approver For Employee Signature

Seals, Michelle

Approver Signature

Total Regular Hours : 40.00
Total Overtime Hours : 5.00
Total Non-Worked Hours: 0.00

Timecard Period 8-MAY-10 - 14-MAY-10
Organization : 46.DMJMrHARRIS INC.GSCHGI.1294
Assign Category : A - Full Time
Employee Category : Exempt
Work Schedule :

Employee Name : Buchko, Duane E
Employee Number : 637829

Project	Task	Type	SAT 08-MAY	SUN 09-MAY	MON 10-MAY	TUE 11-MAY	WED 12-MAY	THUR 13-MAY	FRI 14-MAY	Total
04601538 MA Hwy Bridge -B&P-Metro DC/MD	0001 B&P General	Regular Hrs	0.00	0.00	2.00	0.00	4.00	2.00	2.00	10.00
60132273 90819-O'HARE DESIGN-JV BRIDGE	17 CENTRAL DESIGN PACKA	Regular Hrs	0.00	0.00	0.00	2.00	0.00	2.00	0.00	4.00
60132273 90819-O'HARE DESIGN-JV BRIDGE	18 CARGO TUNNEL MOD	Regular Hrs	0.00	0.00	2.00	0.00	0.00	0.00	0.00	2.00
60132273 90819-O'HARE DESIGN-JV BRIDGE	19 PROJECT MANAGEMENT	Regular Hrs	0.00	0.00	4.00	2.00	2.00	4.00	4.00	16.00
60145080 IL Tollway 2010 GEC TS	01.001230 Unmanned Plz-Generat	Regular Hrs	0.00	0.00	0.00	0.00	0.00	0.00	2.00	2.00
60155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	0.00	0.00	0.00	4.00	2.00	0.00	0.00	6.00
		Total:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00

Buchko, Duane E
Employee Signature

Approver For Employee Signature

Seals, Michelle
Approver Signature

Total Regular Hours : 40.00
Total Overtime Hours : 0.00
Total Non-Worked Hours: 0.00

Timecard Period -MAY-10 - 14-MAY-10
Organization : 46.CTE INC.USCHG1.1015
Assign Category : A - Full Time
Employee Category : Exempt
Work Schedule :

Employee Name : Catalano, Joseph R
Employee Number : 637458

Project	Task	Type	SAT 08-MAY	SUN 09-MAY	MON 10-MAY	TUE 11-MAY	WED 12-MAY	THUR 13-MAY	FRI 14-MAY	Total
04601070 MidWest Office Administration	1015 OFFICE ADMIN 1015	Regular Hrs	0.00	0.00	2.00	2.00	3.00	2.00	1.00	10.00
04601070 MidWest Office Administration	1018 OFFICE ADMIN 1018	Regular Hrs	0.00	0.00	3.00	1.00	2.00	1.00	1.00	8.00
04601584 MW Hwy Bridge-B&P-IL, IN,OH,MI	0055 Illinois Tollway	Regular Hrs	0.00	0.00	0.00	2.00	0.00	0.00	0.00	2.00
04601584 MW Hwy Bridge-B&P-IL, IN,OH,MI	0094 IDOT PTB 156	Regular Hrs	0.00	0.00	1.00	2.00	1.00	1.00	0.00	5.00
04601793 MN Reg. - Hwy Bridge - G&A	0001 General Overhead	Regular Hrs	0.00	0.00	0.00	0.00	0.00	2.00	0.00	2.00
60039558 Assist Bureau of Admin/Plan	0001 Assist CDOT/ADMIN	Regular Hrs	0.00	0.00	0.00	1.00	0.00	1.00	0.00	2.00
60049849 R-60019596-441027 CONSTR ENGR	0002 ADMIN & MANAGEMENT	Regular Hrs	0.00	0.00	1.00	0.00	1.00	0.00	0.00	2.00
60145080 IL Tollway 2010 GEC TS	02.000002 Multi-Yr Prog Dev	Regular Hrs	0.00	0.00	0.00	0.00	0.00	0.00	6.00	6.00
60147016 Mannheim Rd. Brdg. Replacement	01 QA/QC AECOM	Regular Hrs	0.00	0.00	0.00	0.00	1.00	1.00	0.00	2.00
60155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	0.00	0.00	1.00	0.00	0.00	0.00	0.00	1.00
		Total:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00

Catalano, Joseph R
Employee Signature

Approver For Employee Signature

Lucas, Mark M
Approver Signature

Total Regular Hours : 40.00
Total Overtime Hours : 0.00
Total Non-Worked Hours: 0.00

AECOM TECHNOLOGY RATION
Employee Tim

Timecard Period : 3-MAY-10 - 14-MAY-10
Organization : 46.CTE INC.USCHG1.1015
Assign Category : A - Full Time
Employee Category : Exempt
Work Schedule :

Employee Name : Nash, Cheryl M
Employee Number 637533

Project	Task	Type	SAT 08-MAY	SUN 09-MAY	MON 10-MAY	TUE 11-MAY	WED 12-MAY	THUR 13-MAY	FRI 14-MAY	Total
04601070 MidWest Office Administration	1015 OFFICE ADMIN 1015	Regular Hrs	0.00	0.00	8.00	4.00	1.00	1.00	0.00	14.00
60042801 R-44140781-44140781 WD/IP/RR/	1100.0100 DRAFT REPORT	Regular Hrs	0.00	0.00	0.00	0.00	3.00	0.00	2.00	5.00
30098028 MWRD-HERITAGE PK CONCEPT DSN	04 WETLAND PERMIT-ET	Regular Hrs	0.00	0.00	0.00	0.00	0.00	0.00	3.00	3.00
60145080 IL Tollway 2010 GEC TS	01.000004 Guidelns&Criteria	Regular Hrs	0.00	0.00	0.00	0.00	2.00	0.00	0.00	2.00
60145080 IL Tollway 2010 GEC TS	01.000110 NPDES Permit	Regular Hrs	0.00	0.00	0.00	0.00	0.00	2.00	0.00	2.00
60145080 IL Tollway 2010 GEC TS	01.009037 Env Std Upn Req	Regular Hrs	0.00	0.00	0.00	4.00	2.00	4.00	0.00	10.00
60155856 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	0.00	0.00	0.00	0.00	0.00	0.00	3.00	3.00
60155877 71st Street Grade Separation	07.10 Env-PSI	Regular Hrs	0.00	0.00	0.00	0.00	0.00	1.00	0.00	1.00
		Total:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00

Nash, Cheryl M
Employee Signature

Approver For Employee Signature

Smith, Brian J
Approver Signature

Total Regular Hours : 40.00
Total Overtime Hours : 0.00
Total Non-Worked Hours: 0.00

ASCOM TECHNOLOGY : PATION
Employee Tim

Timecard Period -MAY-10 - 14-MAY-10
Organization : 46.CTE INC.USCHG1.1918
Assign Category : A - Full Time
Employee Category : Exempt
Work Schedule :

Employee Name : O'Connor, Kathleen N (Katie)
Employee Number : 657533

Project	Task	Type	SAT 08-MAY	SUN 09-MAY	MON 10-MAY	TUE 11-MAY	WED 12-MAY	THUR 13-MAY	FRI 14-MAY	Total
4691001 46.ATG_Fringe Hours	10 PTO	PTO	0.00	0.00	0.00	0.00	8.00	8.00	8.00	24.00
0131714 106414-WASHINGTON & 75TH STREE	02 RESIDENT ENGINEER	Regular Hrs	0.00	0.00	0.00	8.00	0.00	0.00	0.00	8.00
0159656 BNSF SELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	0.00	0.00	8.00	0.00	0.00	0.00	0.00	8.00
		Total:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00

O'Connor, Kathleen N (Katie)
Employee Signature

Approver For Employee Signature

Catalano, Joseph R
Approver Signature

Total Regular Hours : 16.00
Total Overtime Hours : 0.00
Total Non-Worked Hours: 24.00

ACCOM TECHNOLOGY C RATION
Employee Tim

imecard Period		-MAY-10 - 14-MAY-10
rganization	:	46.CTE INC.USCHG1.1018
ssign Category	:	A - Full Time
mployee Category	:	Exempt
ork Schedule	:	
mployee Name	:	Powers, James T
mployee Number	:	637537

Project	Task	Type	SAT 08-MAY	SUN 09-MAY	MON 10-MAY	TUE 11-MAY	WED 12-MAY	THUR 13-MAY	FRI 14-MAY	Total
0155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	OT Straight Time Hrs	0.00	0.00	0.00	1.00	1.00	1.00	1.00	4.00
0155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	9.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00
		Total:	0.00	0.00	8.00	9.00	9.00	9.00	9.00	44.00

Employee Signature	Approver For Employee Signature	Approver Signature
	Seals, Michelle	Seals, Michelle

Total Regular Hours :	40.00
Total Overtime Hours :	4.00
Total Non-Worked Hours:	0.00

AECOM TECHNOLOGY C ORATION
Employee Tim

Timecard Period : -MAY-10 - 21-MAY-10
Organization : 6.DMJM+HARRIS INC.USCHG1.1294
Assign Category : A - Full Time
Employee Category : Exempt
Work Schedule :

Employee Name : Buchko, Duane E
Employee Number : 637829

Project	Task	Type	SAT 15-MAY	SUN 16-MAY	MON 17-MAY	TUE 18-MAY	WED 19-MAY	THUR 20-MAY	FRI 21-MAY	Total
04601001 46.ATG_Fringe Hours	10 PTO	PTO	0.00	0.00	0.00	0.00	0.00	0.00	8.00	8.00
04601584 MW Hwy Bridge-B&P-IL, IN,OH,MI	0055 Illinois Tollway	Regular Hrs	0.00	0.00	0.00	0.00	2.00	0.00	0.00	2.00
04601793 MW Reg. - Hwy Bridge - G&A	0001 General Overhead	Regular Hrs	0.00	0.00	4.00	2.00	0.00	0.00	0.00	6.00
00092588 Traffic Policies and Proc	2006 Bridge Vert. Clear	Regular Hrs	0.00	0.00	0.00	0.00	2.00	0.00	0.00	2.00
60132273 90819-O'HARE DESIGN-JV BRIDGE	19 PROJECT MANAGEMENT	Regular Hrs	0.00	0.00	4.00	2.00	2.00	4.00	0.00	12.00
60145080 IL Tollway 2010 GEC TS	01.001230 Unmanned Plz-Generat	Regular Hrs	0.00	0.00	0.00	2.00	0.00	0.00	0.00	2.00
60155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	0.00	0.00	0.00	2.00	2.00	4.00	0.00	8.00
		Total:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00

Buchko, Duane E
Employee Signature

Approver For Employee Signature

Casalino, Denise M
Approver Signature

Total Regular Hours : 32.00
Total Overtime Hours : 0.00
Total Non-Worked Hours: 8.00

AECOM TECHNOLOGY C SATION
Employee Tim

Timecard Period -MAY-10 - 21-MAY-10
Organization : CTE INC.USCHG1.1015
Assign Category : A - Full Time
Employee Category : Exempt
Work Schedule :

Employee Name : Catalano, Joseph R
Employee Number : 637458

Project	Task	Type	SAT 15-MAY	SUN 16-MAY	MON 17-MAY	TUE 18-MAY	WED 19-MAY	THUR 20-MAY	FRI 21-MAY	Total
4601070 MidWest Office Administration	1015 OFFICE ADMIN 1015	Regular Hrs	0.00	0.00	1.00	3.00	1.00	2.00	2.00	9.00
4601070 MidWest Office Administration	1018 OFFICE ADMIN 1018	Regular Hrs	0.00	0.00	1.00	2.00	1.00	3.00	2.00	9.00
4601584 MW Hwy Bridge-B4P-IL, IN,OH,MI	0055 Illinois Tollway	Regular Hrs	0.00	0.00	1.00	0.00	1.00	0.00	0.00	2.00
4601584 MW Hwy Bridge-B4P-IL, IN,OH,MI	0094 IDOT PTB 156	Regular Hrs	0.00	0.00	1.00	1.00	1.00	1.00	1.00	5.00
4601733 MW Reg. - Hwy Bridge - G6A	0001 General Overhead	Regular Hrs	0.00	0.00	1.00	0.00	1.00	0.00	0.00	2.00
0033858 Assist Bureau of Admin/Plan	0001 Assist CDOT/ADMIN	Regular Hrs	0.00	0.00	1.00	0.00	1.00	0.00	0.00	2.00
0049849 R-60019596-441027 CONSTR ENGR	0002 ADMIN & MANAGEMENT	Regular Hrs	0.00	0.00	0.00	1.00	0.00	1.00	0.00	2.00
0103058 PTB 152-003 CM Services	01 Project Principal	Regular Hrs	0.00	0.00	1.00	0.00	0.00	1.00	0.00	2.00
0147016 Mannheim Rd. Brdg. Replacement	01 QA/QC AECOM	Regular Hrs	0.00	0.00	0.00	1.00	0.00	0.00	3.00	4.00
0155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	0.00	0.00	1.00	0.00	2.00	0.00	0.00	3.00
		Total:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00

Catalano, Joseph R
Employee Signature

Approver For Employee Signature

Lucas, Mark M
Approver Signature

Total Regular Hours : 40.00
Total Overtime Hours : 0.00
Total Non-Worked Hours: 0.00

imecard Period : MAY-10 - 21-MAY-10
rganization : ..CTE INC.USCHG1.1018
ssign Category : A - Full Time
mployee Category : Exempt
ork Schedule :

mployee Name : Powers, James T
mployee Number : 637537

roject	Task	Type	SAT 15-MAY	SUN 16-MAY	MON 17-MAY	TUE 18-MAY	WED 19-MAY	THUR 20-MAY	FRI 21-MAY	Total
0155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	OT Straight Time Hrs	0.00	0.00	0.00	1.00	1.00	1.00	1.00	4.00
0155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00
		Total:	0.00	0.00	8.00	9.00	9.00	9.00	9.00	44.00

Seals, Michelle

Employee Signature

Approver For Employee Signature

Seals, Michelle

Approver Signature

Total Regular Hours : 40.00
Total Overtime Hours : 4.00
Total Non-Worked Hours: 0.00

AECOM TECHNOLOGY ORATION
Employee Ti

Timecard Period 2-MAY-10 - 28-MAY-10
Organization : 46.CTE INC.USCHG1.1015
Assign Category : A - Full Time
Employee Category : Exempt
Work Schedule :

Employee Name Catalano, Joseph R
Employee Number . 637458

Project	Task	Type	SAT 22-MAY	SUN 23-MAY	MON 24-MAY	TUE 25-MAY	WED 26-MAY	THUR 27-MAY	FRI 28-MAY	Total
04601070 MidWest Office Administration	1015 OFFICE ADMIN 1015	Regular Hrs	0.00	0.00	2.00	2.00	0.00	2.00	3.00	9.00
04601070 MidWest Office Administration	1018 OFFICE ADMIN 1018	Regular Hrs	0.00	0.00	2.00	2.00	0.00	2.00	3.00	9.00
04601584 MW Hwy Bridge-B&P-IL, IN,OH,MI	0055 Illinois Tollway	Regular Hrs	0.00	0.00	0.00	0.00	5.00	0.00	0.00	5.00
04601584 MW Hwy Bridge-B&P-IL, IN,OH,MI	0057 RCMA Areas 10-12	Regular Hrs	0.00	0.00	1.00	0.00	0.00	0.00	0.00	1.00
04601584 MW Hwy Bridge-B&P-IL, IN,OH,MI	0094 IDOT PTB 156	Regular Hrs	0.00	0.00	2.00	2.00	2.00	0.00	0.00	6.00
60039558 Assist Bureau of Admin/Plan	0001 Assist CDOT/ADMIN	Regular Hrs	0.00	0.00	0.00	1.00	0.00	1.00	0.00	2.00
60049849 R-60019596-441027 CONSTR ENGR	0002 ADMIN & MANAGEMENT	Regular Hrs	0.00	0.00	1.00	0.00	1.00	0.00	0.00	2.00
60103058 PTB 152-003 CM Services	01 Project Principal	Regular Hrs	0.00	0.00	0.00	1.00	0.00	1.00	0.00	2.00
60145090 IL Tollway 2010 GEC TS	02.000002 Multi-Yr Prog Dev	Regular Hrs	0.00	0.00	0.00	0.00	0.00	0.00	2.00	2.00
60155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	0.00	0.00	1.00	0.00	1.00	0.00	0.00	2.00
		Total:	0.00	0.00	9.00	8.00	9.00	6.00	8.00	40.00

Catalano, Joseph R
Employee Signature

Approver For Employee Signature

Smiley, Irwin C
Approver Signature

Total Regular Hours : 40.00
Total Overtime Hours : 0.00
Total Non-Worked Hours: 0.00

AECOM TECHNOLOGY ORATION
Employee Ti

Timecard Period 2-MAY-10 - 28-MAY-10
Organization . 46.CTE INC.USCHGI.)018
Assign Category : A - Full Time
Employee Category . Exempt
Work Schedule .

Employee Name O'Connor, Kathleen N (Katie)
Employee Number : 657533

Project	Task	Type	SAT 22-MAY	SUN 23-MAY	MON 24-MAY	TUE 25-MAY	WED 26-MAY	THUR 27-MAY	FRI 28-MAY	Total
60131716 106444-WASHINGTON & 75TH STREE	02 RESIDENT ENGINEER	OT Straight Time Hrs	0.00	0.00	0.00	1.00	0.00	2.50	0.00	3.50
60131716 106444-WASHINGTON & 75TH STREE	02 RESIDENT ENGINEER	Regular Hrs	0.00	0.00	0.00	8.00	0.00	8.00	0.00	16.00
60145080 IL Tollway 2010 GEC TS	02.000002 Multi-Yr Prog Dev	Regular Hrs	0.00	0.00	1.00	0.00	0.00	0.00	0.00	1.00
60155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	0.00	0.00	7.00	0.00	8.00	0.00	8.00	23.00
		Total:	0.00	0.00	8.00	9.00	8.00	10.50	8.00	43.50

O'Connor, Kathleen N (Katie)
Employee Signature

Approver For Employee Signature

Catalano, Joseph R
Approver Signature

Total Regular Hours : 40.00
Total Overtime Hours : 3.50
Total Non-Worked Hours: 0.00

AECOM TECHNOLOGY ORATION
Employee Ti

Timecard Period 22-MAY-10 - 28-MAY-10
Organization : 46.CTE INC.USCHG1.1018
Assign Category : A - Full Time
Employee Category : Exempt
Work Schedule

Employee Name : Powers, James T
Employee Number : 607537

Project	Task	Type	SAT 22-MAY	SUN 23-MAY	MON 24-MAY	TUE 25-MAY	WED 26-MAY	THUR 27-MAY	FRI 28-MAY	Total
60155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	OT Straight Time Hrs	0.00	0.00	0.00	1.00	1.00	1.00	0.00	3.00
60155656 BNSF BELMONT GRADE SEPARATION	1000 CM SERVICES	Regular Hrs	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00
		Total:	0.00	0.00	8.00	9.00	9.00	9.00	8.00	43.00

Seals, Michelle

Employee Signature

Approver For Employee Signature

Seals, Michelle

Approver Signature

Total Regular Hours : 40.00
Total Overtime Hours : 3.00
Total Non-Worked Hours: 0.00

IAECC

EMPLOYEE EXPENSE REPORT

Employee No. 637537

Employee Name Powers, James T

Reimbursement Currency USD-US Dollar

Business Purpose Office Administration

Use these excel commands ONLY:
a. Cntrl + C - To copy the cell value
b. Cntrl + V - To paste the cell value
c. Cntrl + E - To prepare the spreadsheet for import
d. DO NOT USE cut and paste excel command (Do not use Ctrl X)

Please Note:
a. Red - Required/validated in IE Upload
b. Shared area - Protected or Selection
c. If the Area below reads ERROR please contact th

	Descriptions							Daily Itinerary		Personal Auto			Transportation			Meals / Lodging				
Line No.	Date Of Expense (mm/dd/yy)	Project No.	Task Number	Justification	Receipts Attached	Curr	Exchange Rate (Foreign to US$)	From	To	# Of Miles	Dollar per Mile	Mileage Expense	Airfare	Car Rental	Taxi, Bus, Train	Lodging Tax (Room, City, Etc.)	Lodging	Breakfast	Lunch	Dinner
1	29-Apr-2010	60165656	1000	1	YES	USD	1.0000				0.500	0.00								
2					YES	USD	1.0000				0.500	0.00								
3					YES	USD	1.0000				0.500	0.00								
4					YES	USD	1.0000				0.500	0.00								
5					YES	USD	1.0000				0.500	0.00								
6					YES	USD	1.0000				0.500	0.00								
7					YES	USD	1.0000				0.500	0.00								
8					YES	USD	1.0000				0.500	0.00								
9					YES	USD	1.0000				0.500	0.00								
10					YES	USD	1.0000				0.500	0.00								
11					YES	USD	1.0000				0.500	0.00								
12					YES	USD	1.0000				0.500	0.00								
13					YES	USD	1.0000				0.500	0.00								
14					YES	USD	1.0000				0.500	0.00								
15					YES	USD	1.0000				0.500	0.00								
16					YES	USD	1.0000				0.500	0.00								
17					YES	USD	1.0000				0.500	0.00								
18					YES	USD	1.0000				0.500	0.00								
19					YES	USD	1.0000				0.500	0.00								
20					YES	USD	1.0000				0.500	0.00								
21					YES	USD	1.0000				0.500	0.00								
22					YES	USD	1.0000				0.500	0.00								
23					YES	USD	1.0000				0.500	0.00								
24					YES	USD	1.0000				0.500	0.00								
25					YES	USD	1.0000				0.500	0.00								
Total										0		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

COMPANY PAID EXPENSES

1						USD													
2						USD													
3						USD													
4						USD													
5						USD													
Total													0.00	0.00	0.00	0.00	0.00		

Employee Signature

Supervisor Approval

e AIMS Help Desk / (888) 823-AIMS

AECOM

EMPLOYEE EXPENSE REPORT

Employee No.	837537
Employee Name	Powers, James T

Line No.	Total Meals (Excluding Alcohol)	Other: Alcohol	Entertainment	Business Meetings	Parking	Phone / Cell / Fax	All Others	Others Amount	Total
1	0.00						OFF-Office Equipment	362.05	362.05
2	0.00						Select Expenditure Type		0.00
3	0.00						Select Expenditure Type		0.00
4	0.00						Select Expenditure Type		0.00
5	0.00						Select Expenditure Type		0.00
6	0.00						Select Expenditure Type		0.00
7	0.00						Select Expenditure Type		0.00
8	0.00						Select Expenditure Type		0.00
9	0.00						Select Expenditure Type		0.00
10	0.00						Select Expenditure Type		0.00
11	0.00						Select Expenditure Type		0.00
12	0.00						Select Expenditure Type		0.00
13	0.00						Select Expenditure Type		0.00
14	0.00						Select Expenditure Type		0.00
15	0.00						Select Expenditure Type		0.00
16	0.00						Select Expenditure Type		0.00
17	0.00						Select Expenditure Type		0.00
18	0.00						Select Expenditure Type		0.00
19	0.00						Select Expenditure Type		0.00
20	0.00						Select Expenditure Type		0.00
21	0.00						Select Expenditure Type		0.00
22	0.00						Select Expenditure Type		0.00
23	0.00						Select Expenditure Type		0.00
24	0.00						Select Expenditure Type		0.00
25	0.00						Select Expenditure Type		0.00
Total	0.00	0.00	0.00	0.00	0.00	0.00		362.05	362.05

1	DVD CAMCORDER / DVDS / CASE	0.00
2		0.00
3		0.00
4		0.00
5		0.00
Total		0.00

Fry's ELECTRONICS

:: 31 Reg: 15 Gordon, Shaunteka T.
inley Road 133417
Grove, IL 60515
30) 390-2100 FAX:(630) 390-2118
: 38400607
WERS

NVOICE#: 4524376
CHANT: 172188028994 F3 M2
XXXXXXXXX9366 MASTER CARD
ERS/JAMES
: $362.05 034757 03005563
243 SONY DCRDVD650 1 @ 299.00
SONY DCRDVD650 D5 T
DVD VIDEO CAMCORDER Asc: 139118
60X OPT ZM, 2.7" LCD
CARL ZEISS LENS
Ser: PSC DECLINED
0749 SONY 10DMR30RS1 1 @ 14.99
SONY 10DMR30RS1P D5 T
8CM DVD-R MEDIA Asc: 13911
10 PACK W/ NEOPRENE CASE
5763982 LOWEPRO EDIT 13 1 @ 21.2
LOWEPRO EDIT 130 BLUE D5
CAMCORDER BAG Asc: 1391
LIGHTWEIGHT,COMPACT

~~SUBTOTAL~~ 335.2
SALES TAX @ 8.00% 26.8
TOTAL DUE 362.0

CARD xxxxxxxxxxxx9366 362.0

TOTAL TENDER 362.0
CHANGE DUE 0.0

Name	Business Purpose
	DVD CAMCORDER.

$ 362.05

Owner: Powers, Jim

Conference	Date	Time	Attendees	Minutes	Total Charges
72543454	04/28/10	15:44 ET	2	4	$0.10

Reserved By , Reservationless-Plus

Project Accounting Code: 04601070.1018

Connect	Attendee	Call Number	Type	Minutes	Charge
15:46 ET	eRes-Plus - 3124464205		US/R8	1	$0.02
15:44 ET	eRes-Plus - 6309632247 LDR		US/R8	3	$0.06
State & Local Taxes and Fees					$0.02

Conference	Date	Time	Attendees	Minutes	Total Charges
72754370	04/29/10	11:49 ET	2	6	$0.17

Reserved By , Reservationless-Plus

Project Accounting Code: 04601070.1018

Connect	Attendee	Call Number	Type	Minutes	Charge
11:51 ET	eRes-Plus - 3129071994		US/R8	2	$0.04
11:49 ET	eRes-Plus - 6309632247 LDR		US/R8	4	$0.08
State & Local Taxes and Fees					$0.05

Conference	Date	Time	Attendees	Minutes	Total Charges
73042592	04/30/10	10:37 ET	6	356	$9.69

Reserved By , Reservationless-Plus

Project Accounting Code: 04601070.1018

Connect	Attendee	Call Number	Type	Minutes	Charge
10:37 ET	eRes-Plus - 6309632247 LDR		US/R8	77	$1.54
10:55 ET	eRes-Plus - 7089245421		US/R8	59	$1.18
11:00 ET	eRes-Plus - 7637823000		US/R8	54	$1.08
11:01 ET	eRes-Plus - 7637823000		US/R8	52	$1.04
10:59 ET	eRes-Plus - 8157418524		US/R8	55	$1.10
10:55 ET	eRes-Plus - 9139917898		US/R8	59	$1.18
State & Local Taxes and Fees					$2.57

60155656.1000

Detail is printed on the front and back of the invoice

CivCon Services, Inc.

230 West Monroe, Suite 340
Chicago, IL 60606
P: 312-379-2220
F: 312-379-2226

To: Mr. Joseph R. Calotano, P.E.
Associate Vice President
AECOM
303 East Wacker Drive, Suite 600
Chicago, IL 60601-5276

CivCon Invoice No.: 10-05-28
Invoice Date: 6/3/2010
Invoice Period: 6/1/2010 - 5/28/2010

Project Name: AECOM/Metra Belmont Road Grade Separation
Contract No. K91048

		This Period	Prev. Invoiced	Total to Date
(1) Invoice Period - May 1, 2010 through May 28, 2010				
(2) Maximum Payable				$ 275,000.00
(3) Direct Salaries to Date per Attached Tabulation		$ 8,354.00	$ -	$ 8,354.00
(4) Payroll Burden and Overhead - 102.66%		$ 6,523.02	$ -	$ 6,523.02
(5) Other Direct Salaries per Attached Tabulation		$ -	$ -	$ -
(6) Profit - 0.1 x((3)+(4))		$ 1,287.70	$ -	$ 1,287.70
(7)	SUBTOTAL	$ 14,164.72	$ -	$ 14,164.72
(8) Direct Costs		$ 552.50	$ -	$ 552.50
(9) PAYMENT DUE THIS INVOICE		$ 14,717.22	$ -	$ 14,717.22

I certify that the percent of work shown as completed on this invoice is correct
Subconsultant CivCon Services, Inc.

By: Jorge Moreno

Approved for Payment
60155656 - 1000
By [illegible] 6/18/10

		Rate	Hours	Total
Adel Gholeh	Field Inspector	36.00	176.5	6,354.00
				-
				-

Current Invoiced Direct Labor		$ 6,354.00
Previously Invoiced Direct Labor		$ -
Total to date	176.5	$ 6,354.00

DIRECT COST, TRAVEL & IN-PLANT	Quantity	Unit Price	Total	
Mileage	1105	0.5	$ 552.50	552.50
Meals			$ -	
Cellular Phone usage			$ -	
Messenger/Postage			$ -	
Miscellaneous			$ -	
Total Direct Cost this period				$ 552.50
Previously Invoiced Direct Cost, Travel & In-Plant				$ -
Total Direct Cost				$ 552.50

The way to really fly.

REQUEST FOR PROPOSAL

REVENUE ACCOUNTING SYSTEM
SOFTWARE, HARDWARE AND IMPLEMENTATION SERVICES

RFP NUMBER: 93447

PROPOSAL DUE DATE: 1/08/2009

Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra

Professional Services/Contracts

547 West Jackson Boulevard

Chicago, IL 60661

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7 Evaluation Process

All proposals, which meet the minimum requirements, will be evaluated by Metra which reserves the right to select a firm on the basis of the greatest benefit to Metra. Proposals must be complete and adhere to the required format and instructions to be considered.

7.1 Selection Criteria

For the evaluation process, Foundation I will be the primary basis for evaluation; however the completeness of the overall solution including Downtown POS (Option 1) and Foundation II (Option 2) will influence the choice for the successful Proposer. Metra reserves the right to implement all or none of the options. Metra's recommendation for a contract award will be based on the following criteria in descending order of importance:

1. Quality and soundness of proposed solution, approach and work plan
2. Firm's previous experience with projects of similar scope and size that demonstrate firm's ability and expertise
3. Cost proposal
4. Consideration of proposed solution to Metra specific challenges

Should negotiations occur with a Proposer, Metra will issue an invitation to submit a "Best and Final Offer" to those Proposers remaining in the competitive range. Metra will award a contract to the responsible Proposer whose offer conforms to the requirements of the RFP and is the most advantageous to Metra.

7.2 Selection Process

All four (4) criteria listed under the Evaluation Process for this RFP will be used in the evaluation process to determine the highest ranked Proposer(s). All proposals will be evaluated solely by Metra, which reserves the right to select the highest ranked firm(s) on the basis of what is in Metra's best interest and/or gives the greatest benefits to Metra. Metra will solely be responsible in determining what is in its best interest and what provides Metra the greatest benefits. Proposer may be required to do scripted demos of the software proposed and presentations (either on or off Metra property) as an integral part of the evaluation process. Metra may also consider written responses contained in the proposal, formal interviews and site visits, if done, in its evaluation of the criteria listed in the introduction of Section 7.

Metra SM

Memorandum

April 23, 2009

To: Board of Directors

From: P. A. Pagano
Executive Director

Subject: **Contract Award Recommendation**
Professional Services Contract for Revenue Accounting System Software, Hardware and Implementation Services
Metra RFP No. 93447

A professional services contract is being recommended for your approval in response to RFP No. 93447 for Revenue Accounting System Software, Hardware and Implementation Services.

In November of last year, Metra published an RFP seeking a qualified firm to replace its current portfolio of applications that supports the Revenue Accounting process. Proposals were requested from 30 firms. Four (4) proposals were received. The proposals were received from; Applications Software Technology Corporation (AST), Next Generation, Inc. (NGI), Infosys, and TUSC.

The Evaluation Committee evaluated the proposals utilizing formal established Metra guidelines for selection of professional services. The evaluations were based on the following, listed in order of importance: 1) Quality and soundness of proposed solution, approach and work plan, 2) Firm's previous experience with projects of similar scope and size that demonstrate firm's ability and expertise, 3) Cost proposal and, 4) Consideration of proposed solution to Metra specific challenges. The Evaluation Committee also used a uniform pre-determined scoring process to evaluate and score the proposals. The three highest ranked firms were interviewed. The proposers interviewed were AST, NGI and Infosys. After conducting interviews, the proposer Infosys noted their exception to the FTA required EEO clause. After review by Metra's Law Department to Infosys's exceptions, it was determined that Infosys was a non-responsive proposer and was not allowed to continue in the evaluation process.

Based upon the interviews, the Evaluation Committee requested best and final offers ("BAFO") from the two remaining proposers. The Evaluation Committee ranked the BAFO responses with the previous developed evaluation criteria and established evaluation process. Both proposers were scored with and without cost to arrive at both a raw (with cost) and weighted (without cost) overall score. The raw scores including cost came to 87.5 for AST and 62.5 for NGI; whereas the weighted scores excluding cost came to 82.1 for AST and 67.8 for NGI.

Based upon the process outlined above, the Evaluation Committee recommends awarding a professional services contract to Applications Software Technology Corporation. The Evaluation Committee is recommending a contract for 18 months at a total cost not to exceed $6,633,810.00.

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higher price. The file must explain why company X represents the best value to the agency. The necessity of documenting the specific reasons why proposal A offers a better value to the grantee than proposal B is why a mathematically driven selection decision is not appropriate.

Proposal Evaluation Mechanics

There are many different methods of conducting proposal evaluations to determine best value, and many opinions as to which is the best approach. Grantees may employ any rating method or combination of methods, including: color or adjectival ratings, numerical weights and ordinal rankings. Whatever the method, the important thing is that a statement of the relative strengths, deficiencies, significant weaknesses, and risks supporting the evaluation ratings be documented in the contract file.

Some agencies have employed a quantitative approach of assigning scores to both technical and cost proposals, thereby compelling a source selection that is basically mathematically derived. Proponents of this method usually argue it is the most "objective," and therefore the fairest, approach to determining a winner. On closer examination, however, all approaches are to one degree or another, subjective. The decision regarding what score to assign any given factor is subjective, and any formulas employed after the initial scoring cannot make the process an "objective" one. Further, grantees must be allowed the flexibility of making sound, factually based decisions that are in their agency's best interests. Any approach that assigns a predetermined numerical weight to price, and then seeks to "score" price proposals and factor that score into a final overall numerical grade to automatically determine contract award, is a mistake. Rather, agencies should evaluate the prices offered but not score the price proposals. Prices should be evaluated and brought along side the technical proposal scores in order to make the necessary tradeoff decisions as to which proposal represents the best overall value to the agency. Agencies should carefully consider the technical merits of the competitors and the price differentials to see if a higher price proposal warrants the award based on the benefits it offers to the agency as compared to a lower price proposal. This is a subjective decision-making, tradeoff process.

The difficulties in trying to assign a predetermined weight to price and then scoring price proposals is that no one is smart enough to predict in advance how much more should be paid for certain incremental improvements in technical scores or rankings (depending on what scoring method is used). For example, no one can predict the nature of what will be offered in the technical proposals until those proposals are opened and evaluated. Only then can the nature of what is offered be ascertained and the value of the different approaches proposed be measured. It is against the actual technical offers made that the prices must be compared in a tradeoff process. Agencies cannot predict in advance whether a rating of "Excellent" for a technical proposal will be worth X$ more that a rating of "Good," or whether a score of 95 is worth considerably more or only marginally more than a score of 87. It is what is underneath the "Excellent" and the "Good" ratings, or what has caused a score of 95 vs. a score of 87, that is critical. The goal is to determine if more dollars should be paid to buy the improvement, and

REQUISITIONING OF MATERIALS & SERVICES

I. PURPOSE

This procedure provides instructions for both the normal requisitioning of Materials and/or Services, and instructions for emergency requisitioning of Materials and/or Services. Materials and/or Services requested in an approved Purchase Requisition will be procured by, or otherwise at the direction of, the Procurement Division or Professional Services/ Contracts Division (as applicable) pursuant to the applicable Metra procedure. See:

- PU-04-RC – Informal Quotations and Awards;
- PU-05-RC – Formal Quotations and Awards;
- PU-06-RC – Professional Services Contracts (Grant Funded, Non Brooks Method);
- PU-07-RC – Professional Services Contracts (Non Grant Funded);
- PU-08-RC – Architectural and Engineering Services Contracts (Brooks Method);
- PU-08-RC – Blanket Purchase Orders and Releases;
- PU-13-RC – Direct Purchases;
- PU-14-RC – Formal Solicitation Award For Construction Contracts;
- PU-16-RC – Procurement of Rolling Stock; or
- PU-21-RC – Procurement Card Purchases.

II. POLICY

GENERAL:

This procedure should be utilized in the procurement of all Materials and/or Services. Requisitions for Materials and/or Services will be submitted by using a Purchase Requisition. Non-inventory Material is to be requisitioned separately from inventory Material. Personnel making unauthorized purchase commitments may be held financially liable and may also be subject to disciplinary action, including employment termination.

All procurement transactions will be conducted in a manner providing full and open competition (except as may be necessary in connection with an Emergency Requisition). The Procurement Division (or its designee) is responsible for negotiating with Bidders with respect to the procurement of requested Materials and the Professional Services/ Contracts Division (or its designee) is responsible for negotiating with Bidders with respect to the procurement of requested Services. The Requisitioner/User may not negotiate with Bidders except as necessary in connection with the permitted procurement of Materials and/or Services by Direct Purchases or purchases made by Procurement Card.

Purchase Requisitions that are FTA funded, must adhere to all of the applicable requirements set forth in Circular 4220.1F (attached and incorporated herein as Exhibit I) as well as all applicable Metra procurement procedures, business regulations, and other rules and regulations. Metra prohibits geographic preferences, except in those cases where applicable

REQUISITIONING OF MATERIALS & SERVICES

Materials Management Department

- Review Purchase Requisitions received from Budget Authority. Return Purchase Requisitions to Requisitioner/User which are incomplete, incorrect, or reflect improper approvals for corrections and resubmission, as appropriate.
- If requested Materials and/or Services may not be procured by Direct Purchase or by Procurement Card (as determined by Procurement Division or Professional Services/Contract Divisions, as applicable) make final determination, consistent with past practice, as to whether Bidder(s) are to be selected solely on the basis of price (i.e. Materials and/or Services to be acquired by Sealed Bids/Invitation for Bid (IFB) in accordance with applicable procurement policies and procedures), or whether other factors should be considered (i.e. Materials and/or Services to be acquired by a Request for Proposal (RFP) in accordance with applicable procurement policies and procedures).
- Forward approved Purchase Requisitions to Procurement Department (if for Materials) and/or Professional Services/Contract Divisions (if for Services). Additionally, for Purchase Requisitions requesting Services to be acquired by RFP, determine if Brooks Method should or should not be utilized in procuring such Services, and alert Professional Services/Contract Divisions as to determination.
- Maintain a copy of all Purchase Requisitions, record of Brooks Method determination (as applicable), and copies of all relevant documents in respective procurement file.

Procurement Division or Professional Services/Contract Divisions (as applicable)

- Oversee METRA Purchase Requisition procedures and systems.
- Review Purchase Requisitions received from Materials Management Department. Return Purchase Requisitions to Requisitioner/User which are incomplete, incorrect, or reflect improper approvals for corrections and resubmission, as appropriate.
- If Purchase Requisition acceptable, first determine whether requested Materials and/or Services may be procured by Direct Purchase or by Procurement Card pursuant to applicable procurement policies and procedures (see above) and, if so, coordinate with Requisitioner/User in directly procuring the requested Materials and/or Services.
- If requested Materials and/or Services may be procured by Direct Purchase or by Procurement Card, approved Purchase Requisition and appoint Procurement Agent to procure such Materials and/or Services Card pursuant to applicable procurement policies and procedures (see above).
- Coordinate with Requisitioner/User regarding status of the procurement of the requested Materials and/or Services by Procurement Agent.
- Retain a copy of all processed Purchase Requisitions, explanatory memorandums (if any), including determination of the method of procurement, and all other documents or

PROFESSIONAL SERVICE CONTRACTS (GRANT-FUNDED, NON-BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for the acquisition, administration, and termination of professional service contracts and blanket professional service contracts (hereafter, collectively referred to as "Professional Service Contract(s)" unless otherwise stated) by Metra, which are funded by federal, state, or local grants and which do not involve Architectural and Engineering services (NOTE: See PU-07-RC for Professional Service Contracts that are not funded by capital funds, and PU-08-RC for Architectural and Engineering Service Contracts).

II. POLICY:

GENERAL:

Professional Service Contracts are exempt from competitive bidding pursuant to MET Ordinance 94-18 or NIRC Ordinance 94-1, but must follow grant requirements for the applicable competitive negotiations process. Professional Service Contracts using capital funds must be publicly advertised and competitively negotiated procurements in accordance with FTA guidelines. Proposals will be solicited in a newspaper with general circulation, and specific firms from lists of eligible vendors will be solicited, in order to reach an adequate number of professional firms. The solicitation and contract documents should follow FTA Circular 4220.1F and the Procurement Regulations.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria.

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at

Each proposal accepted for consideration will be evaluated by the Evaluation Committee, first individually by each member then collectively as a group, based on the Evaluation Criteria provided in the subject RFP. The Evaluation Committee shall make a preliminary evaluation of the submitted proposals to identify, normally, no less than the three highest ranked Offerors based on the subject Evaluation Criteria with which the Professional Services/ Contracts Division shall arrange to engage in further discussions.

The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, shall coordinate further discussions with the identified highest ranking Offerors, including the scheduling of a pre-award interview to clarify any final matters. Cost details from such highest ranking Offerors may be obtained on a RC4400 and/or other approved cost sheet. The Professional Services/ Contracts Division shall also obtain such other information from the highest ranking Offerors as necessary to enable an understanding of the basis of the final cost and/or as otherwise requested by the Evaluation Committee. The profit will be negotiated separately from the cost. The Professional Services/ Contracts Division shall complete the Price Analysis Documentation and forward such documentation, together with all other information received with respect to the subject Offerors to the Evaluation Committee.

Upon obtaining the foregoing information, the Evaluation Committee shall re-evaluate the identified highest ranking Offerors, first individually by each member then collectively as a group, to determine the Offeror whose proposal will be most advantageous to Metra based on the Evaluation Criteria. The Professional Services/ Contracts Division shall continue to negotiate with such selected Offeror to determine the compensation that is fair and reasonable, taking into account the scope, complexity, and professional nature of the services. The Professional Services/ Contracts Division will also perform a Cost Analysis of such Offeror's proposal before entering into a Professional Service Contract in order to measure the cost reasonableness of the subject proposal.

Contracts with respect to a given RFP will be generally awarded on a maximum compensation basis, and will reflect a specified maximum amount, payment schedule, and method of payment. Advance payments prior to the incurrence of costs by the Offeror are prohibited. If no contract can be concluded with the highest ranking Offeror, negotiations will be formally terminated with that Offeror and new negotiations will be undertaken with the second highest ranking Offeror (and so on). Upon completion of the foregoing negotiations, the Professional Services/ Contracts Division shall prepare, and have internally approved, a Professional Service Contract to be executed by the selected Offeror. No Professional Service Contract shall exceed five (5) years including options, if any. No portion of the work to be performed by Consultant pursuant to a Professional Service Contract may be assigned to a subcontractor unless explicitly approved in advance by the Requisitioner/User. When a subcontractor is permitted to be utilized by the selected Consultant by the Requisitioner/User, and as a condition of such permission, the

- Monitors contract performance by Offeror and notifies Professional Services/ Contracts Division upon completion or non-compliance.

Risk Management

- Determines insurance requirements for Professional Service Contracts.

Sr. Division Director General Administration

- Reviews Professional Service Contracts and approves as appropriate.

V. INSTRUCTIONS

A. Request for Proposal Preparation

Responsible Party	Action
Requisitioner/User	1. a. Prepare initial RFP, indicating the project's background and objectives, scope, estimated time schedule, required project documents, the specific Evaluation Criteria for the subject project, is a statement of work that clearly, accurately and unambiguously describes the technical requirements for the service(s) to be procured, and all other cost and non-cost related considerations the Requisitioner/User deems relevant for the award of a Professional Service Contract.
	b. Prepare Cost Estimate to establish a base cost for budgetary purposes and attach to the initial RFP.
	c. Prepare Purchase Requisition Form, and attach to the initial RFP.
	d. Forward Cost Estimate, Purchase Requisition and initial RFP in accordance with FI-02-RC for approval.
	e. Consult with DBE Administration on DBE requirements, if any, to be included in initial RFP.
	f. Forward initial RFP and attachments to General Development Department for review of grant numbers and grant assignments.

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section A SOLICATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Purchase Requisition	
2.	Rationale for Method of Procurement:	
3.	Specifications/Statement of Work	
4.	Justification for Procurement	
5.	Term of Contract Does Not Exceed 5 Years.	
6.	Cost Estimate	
7.	Set Aside Decision/DBE Goal	
8.	Justification of Procurement Method	
9.	List of Prospective Proposers	
10.	Proof of Publication	
11.	Copy of RFP	
12.	Addenda	
13.	Pre-proposal Minutes & List of Attendees	
14.	Correspondence with Bidders	
15.	Interoffice Correspondence	
16.	Review of Responsiveness (On Bid Tabulation)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section B AWARD DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Copy of Each Proposal (In Storage)	
2.	Proposal Tabulation Sheet	
3.	Evaluation Team Certification Forms	
4.	Evaluation Sheet/Matrix	
5.	Determination of Competitive Range	
6.	Invitation of Oral Interviews/Presentations	
7.	Notice of Rejection	
8.	Minutes of Discussions	
9.	Correspondence with Proposers	
10.	Cost or Price Analysis	
11.	Justification for Contract Type	
12.	Negotiation Memorandum	
13.	Copy of Each Best and Final Offer (If Applicable)	
14.	Award Recommendation Memorandum	
15.	Board Consent	
16.	Legal Review of Contract Documents (Routing Slip)	
17.	Notice of Award	
18.	Notice to Unsuccessful Proposers	
19.	Procurement Summary	
20.	Bonds (If Applicable)	
21.	Certification of Insurance	
22.	Contract Document (Drawings not Required)	
23.	Notice to Proceed	
24.	Contract/Purchase Order	

Contract No.: _____

Contract Administrator: _____
Date: _____

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section C CONTRACT ADMINISTRATION DOCUMENTS	
Tab No.	Document(s)	Audited By
1.	Post Award Conference	
2.	Quality Assurance Records	
3.	Change Notices/Modification/Change Orders	
4.	Periodic Status Reports	
5.	Site Visit Reports	
6.	Termination/Stop Work Notices or Resolution Plan	
7.	Notice of Claims	
8.	Release of Claims/Bonds	
9.	Assignments	
10.	Notice of Final Payment	
11.	Audit Reports	
12.	Liquidated Damages	
12.	Close out Documentation	

Contract No.: _____

Contract Administrator: _____

Date: _____

Cost Analysis Required (Sole Source) (Element #39):

Metra's Revised Response: The PSR referenced three Metra contracts that were deficient. The PSR also noted that Metra's original response was not adequate because it did not address the original reviewer's requirement that Metra have an adequate process to conduct cost analysis and address how cost analyses will be improved to be compliant in the future. In response to this deficiency, Metra has revised its procedures to require a price or cost analysis when appropriate (see attached proposed revised PU-05-RC, PU-06-RC, PU-08-RC, and PU-14-RC). In addition, please note the attached new Checklist for both IFB and RFP solicitations that include the documents as part of the contract file.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

FORMAL QUOTATIONS AND AWARD

I. PURPOSE

This procedure provides instructions for the solicitation and award of bids for purchases of materials and services, where the estimated cost is $10,000.00 or more.

II. POLICY

This procedure will be used when the acquisition of materials or services will equal or exceed $10,000.00, unless specifically exempted. See Purchasing Exemptions (Exhibit I).

Acquisitions under $10,000.00 may be made utilizing Informal Quotations and Award PU-04-RC. If less than $500.00, use Direct Purchases, PU-13-RC, or Procurement Card Purchases, PU-21-RC.

For the acquisition of professional services, see the appropriate procedure, PU-06-RC, PU-07-RC or PU-08-RC.

The bid solicitation process will contain procedures for including Disadvantaged Business Enterprises on bidders' list for the commodity or service being purchased, where appropriate.

Whenever possible and practical, Metra will endeavor to secure three or more bids (quotations) in the open market. If less than two bids are obtained, the reasons should be documented. When a specific, brand name or vendor is specified, a written memorandum explaining the reasons for the restriction must be provided. The memorandum must be signed by the manager of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director, as appropriate, and the Executive Director.

For purchase orders that include capital funds, a price/cost analysis and history of procurement must be prepared and maintained on file for a single bid or sole source procurement.

A sole source must be the only available vendor that can provide the materials or services. If capital funding is involved, approval of a sole source may be required.

Only bids received by the announced due date and time will be considered.

Solicitation for bids among vendors will be made by media advertisements, (Invitation for Bids/Requests for Proposals). See Exhibit II in PU-04-RC, for Informal Quotations and Awards), and Metra's corporate website.

II. POLICY (Continued)

FORMAL QUOTATIONS AND AWARD

V. INSTRUCTIONS (Continued)

Responsibility		Action
	10.	Review bid/proposal to evaluate for compliance to bid/proposal documents' requirements.
Requisitioner/User	11.	Review technical data and complete the Technical Evaluation Form for the lowest bidder that is responsive to the technical specifications. Include a brief explanation detailing how non-responsive bidders failed to comply with the technical specifications. Forward form to Procurement or Professional Services/Contract Division.
Procurement Division or Professional Services/ Contracts Division	12.	Prepare the purchase order or contract for approval. Follow the "blue folder" process, as applicable. Conduct a price/cost analysis for a single bid or sole source procurement.
	13.	Receive approvals of purchase order from "blue folder" process, if applicable. Issue purchase order to the lowest responsive and responsible bidder. History of procurement must be prepared and maintained on file. Distribute copies of purchase order as follows: Vendor/Contractor/Professional Services firm Vendor Copy Accounts Payable: Accounts Payable Copy Procurement Division or Professional Services/Contracts Division: Procurement Copy Requisitioning Division: Budget Authority Copy and Receiving Copies

PROFESSIONAL SERVICE CONTRACTS (GRANT-FUNDED, NON-BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for the acquisition, administration, and termination of professional service contracts and blanket professional service contracts (hereafter, collectively referred to as "Professional Service Contract(s)" unless otherwise stated) by Metra, which are funded by federal, state, or local grants and which do not involve Architectural and Engineering services (NOTE: See PU-07-RC for Professional Service Contracts that are not funded by capital funds, and PU-08-RC for Architectural and Engineering Service Contracts).

II. POLICY:

GENERAL:

Professional Service Contracts are exempt from competitive bidding pursuant to MET Ordinance 94-18 or NIRC Ordinance 94-1, but must follow grant requirements for the applicable competitive negotiations process. Professional Service Contracts using capital funds must be publicly advertised and competitively negotiated procurements in accordance with FTA guidelines. Proposals will be solicited in a newspaper with general circulation, and specific firms from lists of eligible vendors will be solicited, in order to reach an adequate number of professional firms. The solicitation and contract documents should follow FTA Circular 4220.1F and the Procurement Regulations.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria.

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at

PROFESSIONAL SERVICE CONTRACTS (GRANT-FUNDED, NON-BROOKS METHOD)

Each proposal accepted for consideration will be evaluated by the Evaluation Committee, first individually by each member then collectively as a group, based on the Evaluation Criteria provided in the subject RFP. The Evaluation Committee shall make a preliminary evaluation of the submitted proposals to identify, normally, no less than the three highest ranked Offerors based on the subject Evaluation Criteria with which the Professional Services/ Contracts Division shall arrange to engage in further discussions.

The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, shall coordinate further discussions with the identified highest ranking Offerors, including the scheduling of a pre-award interview to clarify any final matters. Cost details from such highest ranking Offerors may be obtained on a RC4400 and/or other approved cost sheet. The Professional Services/ Contracts Division shall also obtain such other information from the highest ranking Offerors as necessary to enable an understanding of the basis of the final cost and/or as otherwise requested by the Evaluation Committee. The profit will be negotiated separately from the cost. The Professional Services/ Contracts Division shall complete the Price Analysis Documentation and forward such documentation, together with all other information received with respect to the subject Offerors to the Evaluation Committee.

Upon obtaining the foregoing information, the Evaluation Committee shall re-evaluate the identified highest ranking Offerors, first individually by each member then collectively as a group, to determine the Offeror whose proposal will be most advantageous to Metra based on the Evaluation Criteria. The Professional Services/ Contracts Division shall continue to negotiate with such selected Offeror to determine the compensation that is fair and reasonable, taking into account the scope, complexity, and professional nature of the services. The Professional Services/ Contracts Division will also perform a Cost Analysis of such Offeror's proposal before entering into a Professional Service Contract in order to measure the cost reasonableness of the subject proposal.

Contracts with respect to a given RFP will be generally awarded on a maximum compensation basis, and will reflect a specified maximum amount, payment schedule, and method of payment. Advance payments prior to the incurrence of costs by the Offeror are prohibited. If no contract can be concluded with the highest ranking Offeror, negotiations will be formally terminated with that Offeror and new negotiations will be undertaken with the second highest ranking Offeror (and so on). Upon completion of the foregoing negotiations, the Professional Services/ Contracts Division shall prepare, and have internally approved, a Professional Service Contract to be executed by the selected Offeror. No Professional Service Contract shall exceed five (5) years including options, if any. No portion of the work to be performed by Consultant pursuant to a Professional Service Contract may be assigned to a subcontractor unless explicitly approved in advance by the Requisitioner/User. When a subcontractor is permitted to be utilized by the selected Consultant by the Requisitioner/User, and as a condition of such permission, the

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for the acquisition, administration, and termination of contracts for A & E services by Metra, regardless of the funding mechanism.

II. POLICY:

GENERAL:

A & E services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. The Brooks procurement method is based on the award of contracts for services such as A & E services using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, each Offeror's qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria.

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of an Architectural & Engineering (A & E) services contract will be described in the respective Request for Proposals ("RFP") prepared by the

The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, shall coordinate further discussions with the identified highest ranking Offerors, including the scheduling of a pre-award interview to clarify any final matters. The Professional Services/ Contracts Division shall also obtain such other information, other than cost information, necessary to evaluate the identified highest ranking Offerors and their respective proposals.

Upon obtaining the foregoing information, the Evaluation Committee shall re-evaluate the identified highest ranking Offerors, first individually by each member then collectively as a group, to determine the Offeror whose proposal will be most advantageous to Metra based on the Evaluation Criteria. Except in the case of Blanket RFPs, cost details from such highest ranking Offeror will be obtained on a RC4400 form after the evaluation process. For Blanket RFPs, a schedule of positions with the range of hourly rates including overhead and burden and any other costs to be determined will be obtained on RC4400 form from the highest ranking Offeror after the evaluation process. The Professional Services/ Contracts Division shall complete the Price Analysis Documentation and forward such documentation, together with all other information received with respect to the subject Offeror to the Evaluation Committee. The Professional Services/ Contracts Division shall continue to negotiate with such selected Offeror to determine the compensation that is fair and reasonable, taking into account the scope, complexity, and professional nature of the services. The Professional Services/ Contracts Division will also perform a Cost Analysis of such Offeror's proposal before entering into a contract in order to measure the cost reasonableness of the subject proposal.

Contracts with respect to a given RFP will be generally awarded on a maximum compensation basis, and will reflect a specified maximum amount, payment schedule, and method of payment. Advance payments prior to the incurrence of costs by the Offeror are prohibited. If no contract can be concluded with the highest ranking Offeror, negotiations will be formally terminated with that Offeror and new negotiations will be undertaken with the second highest ranking Offeror (and so on). Upon completion of the foregoing negotiations, the Professional Services/ Contracts Division shall prepare, and have internally approved, a contract to be executed by the selected Offeror. No contract shall exceed five (5) years including options, if any. No portion of the work to be performed by Consultant pursuant to a contract may be assigned to a subcontractor unless explicitly approved in advance by the Requisitioner/User. When a subcontractor is permitted to be utilized by the selected Consultant by the Requisitioner/User, and as a condition of such permission, the Consultant/subcontractor must submit: (a) the required cost details to the Professional Services/ Contracts Division using the RC4400 form; and (b) all such other information necessary to enable an understanding of the basis of the subcontract

FORMAL SOLICITATION AND AWARD FOR CONSTRUCTION CONTRACTS

I. PURPOSE

This procedure provides instructions for the solicitation of bids for construction contracts where the estimated cost is $10,000.00 or more.

II. POLICY

Metra will have and use an up-to-date list of firms registered in Metra's vendor database to use in the solicitation of construction contracts.

This procedure will be used when the acquisition of construction contracts will equal or exceed $10,000.00, unless specifically exempted.

Any construction acquisitions under $10,000.00 may be made utilizing Informal Quotations and Award (PU-04-RC), or if less than $500, Direct Purchases, (PU-13-RC).

The bid solicitation process will contain procedures for including Disadvantaged Business Enterprises on bidders' lists for the project to be procured, where appropriate.

Whenever possible and practical, Metra will endeavor to secure three or more bids (quotations) in the open market. If less than two bids are obtained, the reasons should be documented. If the solicitation specified a vendor as a sole source, a written memorandum explaining the reasons for the restriction must be provided. The memorandum must be signed by the manager of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director, as appropriate, and the Executive Director.

A sole source must be the only available contractor that can provide the goods or services.

If capital funding is involved, FTA/IDOT approval of a sole source may be required.

Only bids received by the announced due date and time will be considered.

Solicitation for bids from contractors will be made by media advertisements for Invitation for Bids. (See Exhibit II in PU-04-RC, Informal Quotations and Awards)

For contracts that include capital funds, a price/cost analysis and a history of procurement must be prepared and maintained on file.

Construction contracts will be awarded to the lowest, responsive and responsible bidder.

FORMAL SOLICITATION AND AWARD FOR CONSTRUCTION CONTRACTS

III. DEFINITIONS

Requisition: See Glossary

Sole Source: See Glossary

IV. RESPONSIBILITIES

Requisitioner/User
Submits requisition(s) and provides adequate specifications for items desired in accordance with Requisitioning of Materials and Services, PU-02-RC. Prepares memorandum justifying sole source requirements, signed by the Director of the Requisitioning Department, Division, or Office, the Senior Director or Deputy Executive Director, as appropriate, and the Executive Director. Assists Procurement Division or Professional Services/Contracts Division in providing specifications and clarifying specifications, as required. Reviews bidders to verify their ability to meet technical specifications. Prepares independent cost estimate as required.

Budget Authority
Verifies availability of funds in the appropriate budget account. Reviews signatures and completeness of forms. The Department Head, Director, Section Chief, or other similarly designated person signs approval in box #25 on requisition after checking budget. Maintains a record of all requisitions and purchases to ensure that budget limitations are not exceeded. Verifies proper Account/Distribution codes.

Professional Services/Contracts Division
Determines the method of obtaining quotations. Solicits quotations and selects the lowest responsive and responsible bidder. Where possible, solicits bids to secure a minimum of three qualified vendors. Receives, opens, reads aloud, and records all bids received. If capital funds are involved, makes the award with concurrence from General Development Department. For items that are sole source, prepares memorandum justifying sole source requirement to Materials Management Senior Director. The Professional Services/ Contracts Division will also perform a Cost Analysis of such bid before entering into a contract in order to measure the cost reasonableness of the subject bid. Ensures that justification memorandum is signed by the Senior Director, Materials Management, Deputy Executive Director, and the Executive Director. Prepares purchase order/contracts and obtains signatures. Distributes purchase order/contract copies. Advises the Risk Management Division of the purchase of real property, new equipment, construction activities, and other insurable items. Maintain all substantive records and correspondence with respect to each IFB. Such records include, but are not limited to, the documentation relating to the rationale for the method of procurement, the selection of contract type, and the basis for the contract price. All such information shall be maintained by the Professional Services/Contracts Division in the respective procurement file

CHECK LIST – IFB's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	IFB No. _____ Section A SOLICATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Purchase Requisition	
2.	Specifications	
3.	DBE Goals	
4.	Requirement Justification – Contract/PO Term Does Not Extend Past 5 Years	
5.	Independent Cost Estimate	
6.	Bidder's List	
7.	Justification of Procurement Method	
8.	Copy of IFB	
9.	Proof of Publication	
10.	IFB Attachments/ Modifications	
11.	Pre-bid Minutes & List of Attendees	
12.	Correspondence with Bidders	
13.	Protests Prior to Bid Opening	
14.	Interoffice Correspondence	
15.	Review for Responsiveness (On Bid Tabulation)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST – IFB's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	IFB No. _____ Section B AWARD DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Copy of Each Bid	
2.	Letters of Returned Late Bids or Bid Errors	
3.	Bid Analysis/Tabulation Sheet	
4.	Technical Evaluation/Award Recommendation	
5.	Affirmative Action Evaluation/DBE Goal Exhibit Schedules	
6.	Bidder Responsibility Determination	
7.	Price Analysis or Cost Analysis	
8.	Record of Negotiation for Single Bid (If Applicable)	
9.	Justification of Contract Type Blanket P.O./Sole Source, etc.	
10.	Notice of Award	
11.	Notice to Unsuccessful Bidders (Bond, Check Returns) (If Applicable)	
12.	Legal Review of Contract Documents (Copy of Routing Slip)	
13.	Contract Document (Drawings not Required)	
14.	Performance/Material Bonds, Insurance Certificates (If Applicable)	
15.	Notice to Proceed (If Applicable)	
16.	Purchase Order (If Applicable)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST - IFB's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	IFB No. _____ Section C CONTRACT ADMINISTRATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Post Award Conference (If Applicable)	
2.	Status Reports (If Applicable)	
3.	Change Notices/Modification/Change Orders	
4.	Site Visit Reports (If Applicable)	
5.	Progress Meeting Minutes (If Applicable)	
6.	Quality Assurance Records (If Applicable)	
7.	Termination/Stop Work Notices or Resolution Plan (If Applicable)	
8.	Notice of Claims (If Applicable)	
9.	Release of Claims/Bonds (If Applicable)	
10.	Assignments (If Applicable)	
11.	Audit Reports (If Applicable)	
12.	Punch List Discrepancies	
13.	Liquidated Damages (If Applicable)	
14.	Close Out Documents (If Applicable)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section A SOLICATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Purchase Requisition	
2.	Rationale for Method of Procurement: _____	
3.	Specifications/Statement of Work	
4.	Justification for Procurement	
5.	Term of Contract Does Not Exceed 5 Years.	
6.	Cost Estimate	
7.	Set Aside Decision/DBE Goal	
8.	Justification of Procurement Method	
9.	List of Prospective Proposers	
10.	Proof of Publication	
11.	Copy of RFP	
12.	Addenda	
13.	Pre-proposal Minutes & List of Attendees	
14.	Correspondence with Bidders	
15.	Interoffice Correspondence	
16.	Review of Responsiveness (On Bid Tabulation)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section B AWARD DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Copy of Each Proposal (In Storage)	
2.	Proposal Tabulation Sheet	
3.	Evaluation Team Certification Forms	
4.	Evaluation Sheet/Matrix	
5.	Determination of Competitive Range	
6.	Invitation of Oral Interviews/Presentations	
7.	Notice of Rejection	
8.	Minutes of Discussions	
9.	Correspondence with Proposers	
10.	Cost or Price Analysis	
11.	Justification for Contract Type	
12.	Negotiation Memorandum	
13.	Copy of Each Best and Final Offer (If Applicable)	
14.	Award Recommendation Memorandum	
15.	Board Consent	
16.	Legal Review of Contract Documents (Routing Slip)	
17.	Notice of Award	
18.	Notice to Unsuccessful Proposers	
19.	Procurement Summary	
20.	Bonds (If Applicable)	
21.	Certification of Insurance	
22.	Contract Document (Drawings not Required)	
23.	Notice to Proceed	
24.	Contract/Purchase Order	

Contract No.: _____

Contract Administrator: _____
Date: _____

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section C CONTRACT ADMINISTRATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Post Award Conference	
2.	Quality Assurance Records	
3.	Change Notices/Modification/Change Orders	
4.	Periodic Status Reports	
5.	Site Visit Reports	
6.	Termination/Stop Work Notices or Resolution Plan	
7.	Notice of Claims	
8.	Release of Claims/Bonds	
9.	Assignments	
10.	Notice of Final Payment	
11.	Audit Reports	
12.	Liquidated Damages	
12.	Close out Documentation	

Contract No.: _____

Contract Administrator: _____

Date: _____

PROCUREMENT SYSTEM REVIEW TRAINING

Thursday, April 19, 2012

9:00 AM - 11:00 AM

MATERIALS MANAGEMENT BID OPENING ROOM

AGENDA

Elements to Review and Discuss Corrective Actions:

9:00 AM – Session Starts

- **Element #41:** Cost or Price Analysis
- **Element #42:** Written Record of Procurement History
- **Element #44:** Out of Scope Changes
- **Element #46:** Progress Payments

Break – 10 minutes

- **Element #48:** Cost Plus Percentage of Cost
- **Element #52:** Serial Price Negotiations (A & E)
- **Element #56:** Clauses

Metra
the way to really fly

547 W Jackson Blvd Chicago Illinois 60661 (312) 322-6900 TTY#1-312-322-6774

Memorandum

DATE: April 13, 2012

TO: Procurement, Professional Services/Contracts and Materials Management Staff

FROM: Paul A. Kisielius, Senior Division Director
General Administration

SUBJECT: Procurement System Review Training – 4th Session

I will be conducting the 4th training session on selected deficient Elements that were identified during Metra's Procurement System Review ("PSR"). The 4th session will be held Thursday, April 19th from 9:00 AM to 11:00 AM in the bid opening room. Those that receive this letter are expected to attend the mandatory training session. The PSR Elements that we will review on Thursday are Element numbers 41, 42, 44, 46, 48, 52 and 56.

You have received a copy of the Procurement System Review Final Report dated July 21, 2011. The findings of deficiency start on page 22 and are in numerical order. Please read and be ready to discuss the respective deficiency for the Elements listed above. Prior to the training session each of you will receive the respective corrective action Metra is to institute for each deficient Element.

These sessions are intended to advance our knowledge of the FTA Circular and to correct our past procurement actions into acceptable and compliant procurement activities.

Metra

Meeting Attendance

Subject: PSR Training - Elements # 41, 42, 44, 46, 48, 52, 56

Date: 4/19/12 Time: 9:00 AM Location: 11th Floor Bid Open Room

Name	Affiliation/Position	Phone No.	E-mail Address (if applicable)
Paul A. Kisielius	Metra	322-6666	Kisieliu@metrarr.co
Bruce Darin	Metra Materials	322-6655	BDARIN@METRARR.COM
Carolyn Capranica	Procurement	312.322.6667	ccapranica@metrarr.com
Bob Rich	Contracting Agent	322-6674	rrich@metrarr.com
Denise Johnson	Buyer	322-6654	djohnson@metrarr.com
Brenda Resendez	Buyer	6671	bresendez@metrarr.com
Urbano Damian	Buyer	6662	UDamian@METRARR.com
Steven Vargas	Sr. Math Coordinator	6669	SVARGAS@METRARR.COM
Anthony DiPrima	Prof. Services. Assoc.	6676	adiprima@metrarr.c
Dave DeYoung	Law Dept	6688	ddeyoung@metrarr.com
Ed Remus	MATERIALS/Sr. Agent	6658	eremus@metrarr.com
Lori Lee	Procurement/Sr. Buyer	6656	llee@metrarr.com
Carlos Gamboa	Prof Svcs/Contracts	6668	rgamboa@metrarr.com
Michael Darnell	Materials Analyst	6678	mdarnell@metrarr.com
Geoffrey Urban	Metra	6664	gurban@metrarr.com
Jennifer Zellers	Buyer	6663	jzellers@metrarr.com
Steve Bauman	Prof. Serv. Coord.	7095	sbauman@metrarr.co

2/02

Metra
the way to really fly

547 W Jackson Blvd. Chicago Illinois 60661 (312) 322-6900 TTY#1-312-322-6774

Memorandum

DATE: April 16, 2012

TO: Procurement, Professional Services/Contracts and Materials Management Staff

FROM: Paul A. Kisielius, Senior Division Director
General Administration

SUBJECT: Procurement System Review Training

Attached are the Metra responses and corrective action to the Elements (Element Numbers 41, 42, 44, 46, 48, 52 and 56) that we will be reviewing Thursday at the training session. Please read and be ready to discuss the respective responses.

In addition, please note the attached new Checklist, which ensures that the procedures are properly followed.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

Cost or Price Analysis (Element #41):
The PSR noted that Metra did not have a consistent process in place to complete a cost or price analysis, and documentation of the analysis may have been missing in this file. There is a Cost/Price Review memo in the contract file dated August 18, 2009 summarizing staff's cost analysis (see attached). In addition, Metra's procedures have now been amended to include the revised Appendix G (now called Price Analysis Documentation Form) that Dr. Harris recommended (see attached proposed revised PU-08-RC).

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

relationship and/or as otherwise requested by the Professional Services/ Contracts Division.

The Professional Services/ Contracts Division will maintain all substantive records and correspondence with respect to each RFP. Such records include, but are not limited to, the documentation relating to the rationale for the method of procurement, the selection of contract type, compensation method, the basis of Offeror selection/ rejection based on the Evaluation Criteria, Evaluation Committee rankings (individual and group) with respect to each Offeror and the basis for the contract price. All such information shall be maintained by the Professional Services/ Contracts Division in the respective procurement file (other than large maps, drawing and plans which are to be kept in respective department file).

Once a contract has been executed, the Requisitioner/User and the Professional Services/ Contracts Division will continuously monitor Consultant's compliance with the provisions of the contract. In the event of non-compliance by a Consultant, the Professional Services/ Contracts Division will contact said Consultant and attempt to achieve rectification of the compliance deficiencies. If said Consultant is unresponsive, or such deficiencies are not remedied, the Professional Services/ Contracts Division will take remedial actions with respect to the subject contract, including without limitation termination of the contract, as necessary. The Professional Services/ Contracts Division, in consultation with the Requisitioner/User department, will follow FTA guidelines where appropriate and Metra Administrative Operating Procedures regarding the appropriate actions associated with protest and disputes. (See PU-11-RC).

Upon completion of a project, the Requisitioner/User shall complete a Contract Completion Form and forward the completed form to the Professional Services/ Contracts Division to be filed in the respective procurement file.

III. DEFINITIONS

Architectural & Engineering (A & E) Services: See Glossary.

Blue Folder: See Glossary.

Board Concurrence: See PU-06-RC, Professional Services Contracts, Exhibit I.

Brooks Method: See Glossary.

Canvass: See Glossary.

Capital Funds/Capital Funding: See Glossary.

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, shall coordinate further discussions with the identified highest ranking Offerors, including the scheduling of a pre-award interview to clarify any final matters. The Professional Services/ Contracts Division shall also obtain such other information, other than cost information, necessary to evaluate the identified highest ranking Offerors and their respective proposals.

Upon obtaining the foregoing information, the Evaluation Committee shall re-evaluate the identified highest ranking Offerors, first individually by each member then collectively as a group, to determine the Offeror whose proposal will be most advantageous to Metra based on the Evaluation Criteria. Except in the case of Blanket RFPs, cost details from such highest ranking Offeror will be obtained on a RC4400 form after the evaluation process. For Blanket RFPs, a schedule of positions with the range of hourly rates including overhead and burden and any other costs to be determined will be obtained on RC4400 form from the highest ranking Offeror after the evaluation process. The Professional Services/ Contracts Division shall complete the Price Analysis Documentation and forward such documentation, together with all other information received with respect to the subject Offeror to the Evaluation Committee. The Professional Services/ Contracts Division shall continue to negotiate with such selected Offeror to determine the compensation that is fair and reasonable, taking into account the scope, complexity, and professional nature of the services. The Professional Services/ Contracts Division will also perform a Cost Analysis of such Offeror's proposal before entering into a contract in order to measure the cost reasonableness of the subject proposal.

Contracts with respect to a given RFP will be generally awarded on a maximum compensation basis, and will reflect a specified maximum amount, payment schedule, and method of payment. Advance payments prior to the incurrence of costs by the Offeror are prohibited. If no contract can be concluded with the highest ranking Offeror, negotiations will be formally terminated with that Offeror and new negotiations will be undertaken with the second highest ranking Offeror (and so on). Upon completion of the foregoing negotiations, the Professional Services/ Contracts Division shall prepare, and have internally approved, a contract to be executed by the selected Offeror. No contract shall exceed five (5) years including options, if any. No portion of the work to be performed by Consultant pursuant to a contract may be assigned to a subcontractor unless explicitly approved in advance by the Requisitioner/User. When a subcontractor is permitted to be utilized by the selected Consultant by the Requisitioner/User, and as a condition of such permission, the Consultant/subcontractor must submit: (a) the required cost details to the Professional Services/ Contracts Division using the RC4400 form; and (b) all such other information necessary to enable an understanding of the basis of the subcontract

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating contracts for A & E services by Metra, regardless of the funding mechanism.

II. POLICY:

GENERAL:

A & E services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. The Brooks procurement method is based on the award of contracts for services such as A & E services using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, each Offeror's qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria.

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of an Architectural & Engineering (A & E) services contract will be described in the respective Request for Proposals ("RFP") prepared by the

PRICE ANALYSIS DOCUMENTATION

Date:_____

IFB No:_____.

P.O./Contract No.:_____

The evidence compiled by a price analysis includes:

1. Developing and examining data from multiple sources whenever possible that proves or strongly suggests the proposed price is fair.

2. Determining when multiple data consistently indicate that a given price represents a good value for the money.

3. Documenting data sufficiently to convince a third party that the analyst's conclusions are valid.

The pricing quoted and listed on the attached summary is deemed to be fair and reasonable based on the following analysis, check all applicable:

_____ Comparison with competing suppliers' prices or catalog pricing for the same item(s). (Complete Bid Tabulation Sheet, Summary of Procurement or Comparison Matrix and attach supporting quotes or catalog pages.)

_____ Comparison of proposed pricing with in-house estimates for the same items. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)

_____ Comparison of proposed pricing with historical pricing from previous purchase of the same item, coupled with market data such as the Producers Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record.)

_____ Analysis of price components against current published standards, such as labor rates, dollars per pound, etc. to justify the price reasonableness of whole. (Attach analysis to support conclusion drawn.)

Prepared by:_____

Title:_____

1-SPECIAL TESTING		$ -
N/A		$ -
		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 31,407.28
		$ -
		$ -
	TOTAL OTHER DIRECT COSTS =	$ 31,407.28

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED IN
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF C	
6/11/2009	Yasuhiko Mochizuki	President

METRA 4400 FORM

		$ -	$ -
TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 1,500.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 7,000.00
TOTAL TRAVEL			$ 8,500.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 446,125.69
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 31,407.28
9 TOTAL COSTS			$ 686,254.97
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 23,162.93
11. TOTAL ESTIMATED COSTS & PROFI			$ 709,417.90

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	OT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying il

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 182,401.80
Super Steel Products Corporation	Building Shipping Crates		$ 3,840.00
Super Steel Products Corporation	Administration		$ 9,454.27
Super Steel Products Corporation	Flatbed Leasing		$ 76,422.04
Super Steel Products Corporation	Facility Usage & Utilities		$ 98,373.39
Meiko America, Inc.	Freight Costs		$ 75,634.19
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 446,125.69

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank sheet	AMOUNT

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2015 ~ Project Completion

This form is to be used as provided under METRA procedures. It will be executed & submitted with proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerall Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME Nippon Sharyo U.S.A., Inc.

ADDRESS 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		50	$ 91.00	$ 4,550.00
Project Engineer		120	$ 91.00	$ 10,920.00
Project Administrator		120	$ 81.00	$ 9,720.00
Project Coordinator		120	$ 81.00	$ 9,720.00
Calumet Facility Project Manager		180	$ 81.00	$ 14,580.00
Material Supervisor		360	$ 81.00	$ 29,160.00
Kitting Supervisor		360	$ 81.00	$ 29,160.00
QA / QC Receiving Inspection Supervisor		320	$ 81.00	$ 25,920.00
Transportation Coordinator		180	$ 81.00	$ 14,580.00
QA Personnel		360	$ 81.00	$ 29,160.00
Toyokawa Design Engineer		50	$ 91.00	$ 4,550.00
TOTAL LABOR COST				$ 182,020.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 18,202.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 200,222.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

1-SPECIAL TESTING		$ -
N/A		$ -
		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 43,925.85
		$ -
		$ -
TOTAL OTHER DIRECT COSTS =		$ 43,925.85

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED IN
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF C
6/11/2009	Yasuhiko Mochizuki President

METRA 4400 FORM

		$ -	$ -
TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 1,500.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 10,000.00
TOTAL TRAVEL			$ 11,500.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 662,446.97
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 43,925.85
9 TOTAL COSTS			$ 955,549.82
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 28,160.28
11. TOTAL ESTIMATED COSTS & PROFI			$ 983,710.10

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	DT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying it

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 260,574.01
Super Steel Products Corporation	Building Shipping Crates		$ 19,200.00
Super Steel Products Corporation	Administration		$ 13,506.10
Super Steel Products Corporation	Flatbed Leasing		$ 109,174.34
Super Steel Products Corporation	Facility Usage & Utilities		$ 151,943.68
Meiko America, Inc.	Freight Costs		$ 108,048.84
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 662,446.97

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank sheet	AMOUNT

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2014 ~ December 2014

This form is to be used as provided under METRA procedures. It will be executed & submitted with proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK N0.

METRA TASK NAME: Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME: Nippon Sharyo U.S.A., Inc.

ADDRESS: 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME: Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 88.00	$ 8,360.00
Project Engineer		235	$ 88.00	$ 20,680.00
Project Administrator		165	$ 78.00	$ 12,870.00
Project Coordinator		150	$ 78.00	$ 11,700.00
Calumet Facility Project Manager		200	$ 78.00	$ 15,600.00
Material Supervisor		400	$ 78.00	$ 31,200.00
Kitting Supervisor		420	$ 78.00	$ 32,760.00
QA / QC Receiving Inspection Supervisor		350	$ 78.00	$ 27,300.00
Transportation Coordinator		200	$ 78.00	$ 15,600.00
QA Personnel		400	$ 78.00	$ 31,200.00
Toyokawa Design Engineer		100	$ 88.00	$ 8,800.00
TOTAL LABOR COST				$ 216,070.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 21,607.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 237,677.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

1-SPECIAL TESTING		$ -
N/A		$ -
		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 43,886.08
		$ -
		$ -
	TOTAL OTHER DIRECT COSTS =	$ 43,886.08

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED II
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF C
6/11/2009	Yasuhiko Mochizuki President

METRA 4400 FORM

		$ -	$ -
TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 1,500.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 10,000.00
TOTAL TRAVEL			$ 11,500.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 672,511.64
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 43,886.08
9 TOTAL COSTS			$ 953,628.72
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 26,961.71
11. TOTAL ESTIMATED COSTS & PROFI			$ 980,590.43

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	DT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying li

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 252,984.48
Super Steel Products Corporation	Building Shipping Crates		$ 48,000.00
Super Steel Products Corporation	Administration		$ 13,112.72
Super Steel Products Corporation	Flatbed Leasing		$ 105,994.51
Super Steel Products Corporation	Facility Usage & Utilities		$ 147,518.14
Meiko America, Inc.	Freight Costs		$ 104,901.79
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 672,511.64

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank sheet	AMOUNT

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2013 ~ December 2013

This form is to be used as provided under METRA procedures. It will be executed & submitted wit proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME: Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME: Nippon Sharyo U.S.A., Inc.

ADDRESS: 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME: Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 84.00	$ 7,980.00
Project Engineer		235	$ 84.00	$ 19,740.00
Project Administrator		165	$ 74.00	$ 12,210.00
Project Coordinator		150	$ 74.00	$ 11,100.00
Calumet Facility Project Manager		200	$ 74.00	$ 14,800.00
Material Supervisor		400	$ 74.00	$ 29,600.00
Kitting Supervisor		420	$ 74.00	$ 31,080.00
QA / QC Receiving Inspection Supervisor		350	$ 74.00	$ 25,900.00
Transportation Coordinator		200	$ 74.00	$ 14,800.00
QA Personnel		400	$ 74.00	$ 29,600.00
Toyokawa Design Engineer		100	$ 84.00	$ 8,400.00
TOTAL LABOR COST				$ 205,210.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 20,521.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 225,731.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

1-SPECIAL TESTING		$ -
N/A		$ -
		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 43,019.35
		$ -
		$ -
	TOTAL OTHER DIRECT COSTS =	$ 43,019.35

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED II
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF C
6/11/2009	Yasuhiko Mochizuki President

METRA 4400 FORM

		$ -	$ -
TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 3,000.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 27,000.00
TOTAL TRAVEL			$ 30,000.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 663,322.00
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 43,019.35
9 TOTAL COSTS			$ 953,112.85
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 25,979.09
11. TOTAL ESTIMATED COSTS & PROFI			$ 979,091.94

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	OT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying it

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 254,616.00
Super Steel Products Corporation	Building Shipping Crates		$ 48,000.00
Super Steel Products Corporation	Administration		$ 12,730.80
Super Steel Products Corporation	Flatbed Leasing		$ 102,907.30
Super Steel Products Corporation	Facility Usage & Utilities		$ 143,221.50
Meiko America, Inc.	Freight Costs		$ 101,846.40
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 663,322.00

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank sheet	AMOUNT

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2012 ~ December 2012

This form is to be used as provided under METRA procedures. It will be executed & submitted with proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME: Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME: Nippon Sharyo U.S.A., Inc.

ADDRESS: 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME: Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 81.00	$ 7,695.00
Project Engineer		235	$ 81.00	$ 19,035.00
Project Administrator		165	$ 71.00	$ 11,715.00
Project Coordinator		150	$ 71.00	$ 10,650.00
Calumet Facility Project Manager		200	$ 71.00	$ 14,200.00
Material Supervisor		400	$ 71.00	$ 28,400.00
Kitting Supervisor		420	$ 71.00	$ 29,820.00
QA / QC Receiving Inspection Supervisor		350	$ 71.00	$ 24,850.00
Transportation Coordinator		200	$ 71.00	$ 14,200.00
QA Personnel		400	$ 71.00	$ 28,400.00
Toyokawa Design Engineer		100	$ 81.00	$ 8,100.00
TOTAL LABOR COST				$ 197,065.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 19,706.50
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 216,771.50
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 41,716.00
		$ -
		$ -
TOTAL OTHER DIRECT COSTS =		$ 41,716.00

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED IN
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF (	
6/11/2009	Yasuhiko Mochizuki	President

METRA 4400 FORM

TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 6,000.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 54,000.00
TOTAL TRAVEL			$ 60,000.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2			$ 645,400.00
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 41,716.00
9 TOTAL COSTS			$ 954,928.00
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 24,952.80
11. TOTAL ESTIMATED COSTS & PROF			$ 979,880.80

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	OT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 247,200.00
Super Steel Products Corporation	Building Shipping Crates		$ 48,000.00
Super Steel Products Corporation	Administration		$ 12,360.00
Super Steel Products Corporation	Flatbed Leasing		$ 99,910.00
Super Steel Products Corporation	Facility Usage & Utilities		$ 139,050.00
Meiko America, Inc.	Freight Costs		$ 98,880.00
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 645,400.00

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank shee		AMOUNT
1-SPECIAL TESTING		$ -
N/A		$ -

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2011 ~ December 2011

This form is to be used as provided under METRA procedures. It will be executed & submitted wi proposals in response to Requests for Proposals", for the procurement of professional or persona services. If your cost accounting system does not permit analysis of costs as required, contact th purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME: Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME: Nippon Sharyo U.S.A., Inc.

ADDRESS: 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME: Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 78.00	$ 7,410.00
Project Engineer		235	$ 78.00	$ 18,330.00
Project Administrator		165	$ 68.00	$ 11,220.00
Project Coordinator		150	$ 68.00	$ 10,200.00
Calumet Facility Project Manager		200	$ 68.00	$ 13,600.00
Material Supervisor		400	$ 68.00	$ 27,200.00
Kitting Supervisor		420	$ 68.00	$ 28,560.00
QA / QC Receiving Inspection Supervisor		350	$ 68.00	$ 23,800.00
Transportation Coordinator		200	$ 68.00	$ 13,600.00
QA Personnel		400	$ 68.00	$ 27,200.00
Toyokawa Design Engineer		100	$ 78.00	$ 7,800.00
TOTAL LABOR COST				$ 188,920.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 18,892.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 207,812.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingancy Plan		$ 54,940.00
		$ -
		$ -
	TOTAL OTHER DIRECT COSTS =	$ 54,940.00

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED IN
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF CO
6/11/2009	Yasuhiko Mochizuki President

METRA 4400 FORM

TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 12,000.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 108,000.00
TOTAL TRAVEL			$ 120,000.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 700,000.00
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 54,940.00
9 TOTAL COSTS			$ 1,313,620.00
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 49,362.00
11. TOTAL ESTIMATED COSTS & PROFI			$ 1,362,982.00

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AUD		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	DT. INDIRCT EXPENSE POO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying i

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 240,000.00
Super Steel Products Corporation	Building Shipping Crates		$ 120,000.00
Super Steel Products Corporation	Administration		$ 12,000.00
Super Steel Products Corporation	Flatbed Leasing		$ 97,000.00
Super Steel Products Corporation	Facility Usage & Utilities		$ 135,000.00
Meiko America, Inc.	Freight Costs		$ 96,000.00
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 700,000.00

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank shee		AMOUNT
1-SPECIAL TESTING		$ -
N/A		$ -

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

Project Start ~ December 2010

This form is to be used as provided under METRA procedures. It will be executed & submitted with proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerall Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME Nippon Sharyo U.S.A., Inc.

ADDRESS 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 75.00	$ 7,125.00
Metra Facility Project Instructor		1334	$ 75.00	$ 100,050.00
Project Engineer		390	$ 75.00	$ 29,250.00
Project Administrator		175	$ 65.00	$ 11,375.00
Project Coordinator		250	$ 65.00	$ 16,250.00
Calumet Facility Project Manager		270	$ 65.00	$ 17,550.00
Material Supervisor		450	$ 65.00	$ 29,250.00
Kitting Supervisor		430	$ 65.00	$ 27,950.00
QA / QC Receiving Inspection Supervisor		350	$ 65.00	$ 22,750.00
Transportation Coordinator		200	$ 65.00	$ 13,000.00
QA Personnel		400	$ 65.00	$ 26,000.00
Toyokawa Interior		470	$ 65.00	$ 30,550.00
Toyokawa Electrical		440	$ 65.00	$ 28,600.00
Toyokawa Mechanical		440	$ 65.00	$ 28,600.00
Toyokawa Design Engineer		140	$ 75.00	$ 10,500.00
TOTAL LABOR COST				$ 398,800.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 39,880.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 438,680.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

NIPPON SHARYO U.S.A., INC.

PROPRIETARY / CONFIDENTIAL INFORMATION PROCEDURES

In accordance with RFP 16876, the following procedure for protecting applicable information is incorporated in our Proposal.

Procedure:

Proprietary information is addressed in the submission as follows:

a) The Items which contain proprietary information, have a title page with the following legend:
"This Proposal includes data that shall not be disclosed outside Metra, and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this Proposal". If however, a contract is awarded to this Proposer as a result of, or in connection with, the submission of this data, Metra shall have the right to duplicate, use or disclose the data to the extent provided in the resulting contract. This restriction does not limit Metra's right to use information contained in this data, if it is obtained from another source without restriction.

b) The sheets of data wished to be restricted have the following legend in the lower left and right-hand corner of each page:
"Use or disclosure of data contained on this sheet, is subject to the restriction on the title page of this Proposal".

and / or

"Confidential"

and / or

"Confidentially Marked Drawings and Vertically Margined Text are Proprietary"

Although these notations appear on most pages, not all pages containing the notation include proprietary matter. Only (a) the entire contents of any table and figures stamped "Confidential" and (b) text marked with Vertical lines in the margins are Proprietary.

c) The Term "drawing", as used in the notation, includes all diagrams, drawings, tables and figures.

d) "Proprietary" as used in the notation, includes both (a) trade secrets including any proprietary design, process, data which are exempt from disclosure, and (b) proprietary financial information, which is exempt from disclosure, in accordance with applicable laws.

NIPPON SHARYO U.S.A., INC.

June 11, 2009

Mr. Edward H. Remus, C.P.M
Professional Services / Contracts
547 W. Jackson Blvd. – 11th Floor
Chicago, IL 60661

RE: **Request for Proposals (RFP) RFP No. 16876**
For the Material Kitting and Manufacturing Engineering in the Rehab of 176 Bi-Level Cars

Dear Mr. Remus,

Nippon Sharyo U.S.A., Inc. (NSUSA) is pleased to submit our Price Proposal to Metra in response to Request for Proposal No. 16876, for the Material Kitting and Manufacturing Engineering in the Rehab of 176 Bi-Level Cars.

Enclosed you will find 1 ORIGINAL (Marked) and 3 copies of PART 2: PRICE PROPOSAL. This Proposal includes the pricing for the entire 176 car contract broken down by year. This Proposal is valid for the period of 180 days a ubmission to Metra.

The NSUSA Team genuinely looks forward to having the opportunity to work with Metra, on this important Project.

Sincerely,

Nippon Sharyo U.S.A., Inc.

Yasuhiko Mochizuki
President, Nippon Sharyo U.S.A., Inc.

Cc: T. Hunt, D. Lawrence, D. Ostapa T. Ishihara, K. Ishigure, T. Oshima , Y. Hirose, Y. Ota, K. Hoshino, K. Kuriyama,

2340 S. Arlington Heights Rd.
Suite 605
Arlington Heights, IL
60005

Tel: 847-228-2700
Fax: 847-228-5530

NIPPON SHARYO U.S.A., INC.

Proposal

For

Metra Material Kitting and Manufacturing Engineering in the Rehab of 176 Bi-Level Cars

RFP No. 16876

Specification No. M-08-009
Revision C
Date: 1-26-2009

Part 2 of 2

Price Proposal

Submitted by:

Nippon Sharyo U.S.A., Inc.
2340 S. Arlington Heights Road
Suite 605
Arlington Heights, IL 60005
Phone: 847-228-2700

Metra SM

Memorandum

Date: August 18, 2009

To: File

From: E.H. Remus
Sr. Contracting Agent

Subject: Contract No. K90926
Material Kitting & Manufacturing Engineering in the Rehab of 176 Bi-Level Cars
Nippon Sharyo USA, Inc.
$5,995,673.00

Cost/Price Review

The cost breakdown for the subject project contract from Nippon Sharyo USA, Inc. was reviewed by the Evaluation Committee that was made up of members from the Mechanical Department.

Based upon their recommendation and the fact that the two (2) other proposers were at $8,969,210.00 and $9,147,519.00, the costs submitted by Nippon Sharyo USA, Inc. are determined to be fair and reasonable.

Attachments

EHR/jz

cc: R. Soukup, Mechanical
E. Fernandes, Audit
C. Gamboa, Prof. Srvcs/Contracts

Metra is the registered service mark for the Northeast Illinois Regional Commuter Railroad Corporation.

41. Cost or Price Analysis

Basic Requirement: Chapter VII Section 6.a. of FTA C 4220.1F requires that grantees perform a cost or price analysis in connection with every procurement action, including contract modifications.

Discussion: Fifty-three (53) procurements were reviewed. Six (6) were found to be not deficient, and forty-seven (47) were found deficient. Metra does not have a consistent process in place to complete a cost or price analysis. While several good examples of price analysis were found, the documentation of this analysis was missing in the majority of the files reviewed.

Best Practices: The grantee must ensure that all contract specialists understand the elements of price analysis, and that files reflect the use of such analysis to show a logical determination of price reasonableness. Sources of information that are available to conduct a price analysis include:

-Comparisons with other competitive proposals
-Previous contracts
-Catalog or market prices
-Historical prices and trending
-Independent cost estimates

One method to record this analysis is through use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so such as catalog or market prices offered in substantial quantities to the general public, regulated prices (e.g.1 for many utilities purchases), or comparison with recent prices for similar goods and services.

The grantee should conduct a more thorough analysis of price variances on bids, examining variances from the independent estimate as well as the differences between bids recorded. The form included as Appendix I provides an example of price analysis factors to be considered.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Fifty-three (53) procurements were reviewed. Six (6) were found to be not deficient, and forty-seven (47) were found deficient.

While the review did find some good examples of price analysis, the documentation of this analysis was missing in the majority of the files reviewed.

Metra concurs and will implement the recommendation and modify Metra's bid tabulation document sheet to include a statement, based upon staff's analysis, that the price quoted by the lowest responsive and responsible bidder is fair and reasonable based on competitive bids. Additionally, the price/cost analysis requirement is included in the contract file checklist. The process has been implemented with the appropriate staff.

Reviewing Contractor's Response: The corrective action is adequate but copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

Written Record of Procurement History (Element #42):
The PSR noted that the reviewer was unable to determine the reason for the contractor selection or the basis of the contract price. Metra recognizes that this file was not well organized and it was difficult to track all the elements of the procurement history. Therefore, we have put together the documents that show the process used in this solicitation. The Final Report also noted that Metra's checklist did not include the required determination of the procurement method and the contract type in pre-award activities.

The selection of the contract type as a professional services contract and rationale for the method of procurement (i.e., RFP; A&E) are shown by the attached Requisition form and Procurement Procedures PU-08- RC.

The reasons for contractor selection are shown by the evaluation process, which had the following steps. First, the evaluation committee scored the submitted proposals using the pre-established criteria, and based upon their scores, ranked the proposals (see attached Evaluation Record Sheet). Based upon those rankings, they recommended firms to be invited for interviews. After interviews, the committee conducted another evaluation/ranking (see attached post-interview Proposer Evaluation Record Sheet), and then made a recommendation for price negotiations with the highest ranked firm. The attached memos from the Senior Director, Materials Management to the Executive Director (June 4, 2009) and from the Executive Director to the Board (August 6, 2009) explain the process.

With respect to the basis of the contract price, Staff made a recommendation to the former Executive Director for award of the contract to Nippon Sharyo, subject to costs being obtained. Price negotiations were conducted with Nippon Sharyo and were finalized no later than June 11, 2009, as shown on the attached letter of that date from Nippon Sharyo with its submittal of its 4400 form **before** the award date (September 8, 2009) of the contract.

In response to the Final Report, Metra has amended its procedures (see attached proposed revised PU-02-RC [PAUL/ANTHONY TO PROVIDE]) to require the Materials Management and user departments to analyze each specific procurement and determine whether the Brooks Method should be utilized, and that the documentation of that assessment be kept in the procurement file. In addition, please note the attached new Checklist, which includes the required determination of the procurement method and the contract type in pre-award activities, and ensures that the procedures are properly followed.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who

attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

Clauses (Element #56):

We understand that the small purchases lack the applicable federal clauses and that issue has been addressed. We have reviewed Nippon Sharyo's contract and believe that all the applicable federal clauses were included in the contract. If this is not the case, we would appreciate additional guidance with respect to those additional clauses that Metra should have included in the contract. However, to insure that the required federal clauses are included in future contracts, Metra will insert as an additional exhibit to all procurements, a comprehensive list of the required federal clauses and copies of those clauses from FTA Circular 4220.1F (see attached Contract Clauses Exhibit). In addition, Metra's procedures have now been amended to require that the Contract Clauses Exhibit is included in all future procurement contracts, including contracts for small purchases and professional services (see attached proposed revised PU-04-RC and PU-08-RC).

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

From July 21, 2011, PSR Final Report

42. Written Record of Procurement History

Basic Requirement: Chapter III, Section 3.d (1) of FTA C 4220.1F requires that grantees maintain records detailing the history of each purchase. At a minimum, the following must be included in the procurement files:

-The rationale for the method of procurement;
-Selection of contract type;
-Reasons for contractor selection or rejection;
-The basis for contract price.

This requirement applies to all procurements except micro-purchases.

Discussion: Of the fifty-four (54) procurements reviewed, fourteen (14) were found to be deficient. In general, there is a lack of file organization at Metra and minimal documentation on procurement planning activities. In the fourteen (14) procurement files found to be deficient, the reviewing contractor was unable to determine the reason for the contractor selection or the basis for the contract price.

Best Practices: The Best Practices Manual states "a properly documented procurement file provides an audit trail from the initiation of the requirement to the beginning of the contract." In addition, a well-documented file can be interpreted on its own, without any assistance or additional information. Other agencies use periodic internal audits of the files and the use of checklists to ensure compliance. The grantee could modify its Purchase Summary to list the required elements of the Circular, such as the solicitation method and contract type (sealed bid-fixed price, competitive proposal-fixed price, competitive proposal-time and materials, or sole source).

The grantee should initiate a method of central tracking of their procurement activity. A policy describing the need for important file documentation to be captured in purchasing files should be established. Training should be provided to all personnel involved in the procurement process to ensure that proper procedures are being followed. In addition, the use of checklists would facilitate this process. The Best Practices Procurement Manual recommends the following procurement file documentation where appropriate:

-Purchase request, acquisition planning information and other pre-solicitation documents
-Evidence of availability of funds
-Rationale for the method of procurement (negotiations, formal advertising)
-List of sources solicited
-Independent cost estimate
-State of work/scope of services
-Copies of published notices of proposed contract action
-Copy of the solicitation, all addenda and all amendments
-Liquidated damages determination
-An abstract of each offer or quote
-Contractor's contingent fee representation and other certifications and representations
-Contracting Officer's determination of contractor responsiveness and responsibility

-Cost or pricing data
-Determination that price is fair and reasonable including an analysis of the cost and price data
-Required internal approvals for award
-Notice of award
-Notice to unsuccessful quoters or offerors and record of any debriefing
-Record of any protest
-Bid, Performance, Payment or other bond documents and notices to sureties
-Required insurance documents, if any, and
-Notice to proceed

See Appendix J for examples of file checklists to be made for different contracting methods and change orders.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Of the fifty-four procurements reviewed, fourteen (14) were found to be deficient. In general, there is a lack of file organization at Metra and minimal documentation on procurement planning activities. In the fourteen (14) procurement files found to be deficient, the reviewer was unable to determine the reason for the contractor selection or the basis for the contract price.

Metra's course of action is as follows:

A "Contract/Purchase Order File Content Check List Form for Contracts/Po's Over $10,000.00" is in the file for all contracts solicited and awarded using the IFB or the RFP process. The checklist consists of Date, Initials (Buyer), and Activity of the following:

Pre-Award Activity

1. Requested Independent Cost Estimate of Contract/Purchase Order Valuation
2. Received Independent Cost Estimate of Contract/Purchase Order Valuation
3. Copy of Requisition
4. Invitation for Bids Memorandum with Pre-bid summary
5. Certified Copy of Invitation for Bids
6. Internal Request for Quotation Checklist to Appropriate Using Department
7. Addenda and/or other External Correspondence/Internal Memoranda
8. Applicable Exhibits Included
9. Bid/Proposal Tabulation, Blue Copy of P.O. or Original Contract
10. Received Evaluation Form IFB/RFP Evaluation Loner and Supportive Selection Documentation sent to/from Using Department
11. Internal/External Letters/Memoranda, i.e. DBE Correspondence, Short List, Insurance
12. Protest Notification Forward to Grants Department (If Applicable)
13. Protest Resolution Forward to Grants Department (If Applicable)
14. 4400 Form for A & E/Professional Services Contract
15. Price/Cost Analysis (When Required)

Post Award Activity

1. Performance Labor Material Bond (Construction Only)
2. Notice to Proceed/Vendor Acknowledgment
3. Contracts Completion Form
4. Contract/P.O. Complete/100% Received

The file also has a list of vendors solicited for an IFB or RFP. The requisition is reviewed by Metra's Grants Department to assure that funds are available prior to processing the IFB or RFP solicitation.

Additionally, see the attached instructions for the Organization of Contract File Folders, Operating Files and Purchase Orders (Capital and Operating). This process is in place and being used by the appropriate staff.

Reviewing Contractor's Response: Metra's response is not adequate because it does not address the deficiency. For example, the proposed checklist did not include the required determination of the procurement method and the contract type in Pre-Award activities. Copies of revised procedures and processes, copies of proposed checklists by procurement method, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for acquiring, administering, and terminating contracts for Architectural & Engineering services by Metra, regardless of the funding mechanism.

II. POLICY

Architectural & Engineering services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. The Brooks procurement method is based on the award of contracts for services such as architectural and engineering skills using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, Offerors' qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation.

Proposals will be solicited in a newspaper of general circulation and from Metra's vendor database of potential firms through direct mailings. No dollar value of any project will be directly or indirectly solicited in the initial Request for Proposals.

Requisitioner/User must mutually agree with DBE Administration on DBE requirements prior to involving the Professional Services/Contracts Division.

The process for an award of an Architectural & Engineering services contract will be described in the Request for Proposals (RFP). The RFP will include a clear and accurate description of the technical requirements of the Architectural & Engineering services to be acquired and a statement of work. The evaluation criteria, their relative value, and all other considerations to be used in making the award of an Architectural and Engineering services contract will be determined prior to solicitations. A list of criteria with their relative importance will be included in the RFP.

The evaluation of the proposals will be performed by a designated group that is specific for the solicitation. Any proposal which does not demonstrate the experience, expertise, and other factors necessary to assure achievement of the contract objectives may be eliminated from further consideration.

Contracts will be generally awarded on a maximum compensation basis. The contract will reflect a specified maximum amount, payment schedule, and method of payment. Advance payments prior to the incurrence of costs by the consultant is prohibited. The contract should not exceed five years including options, if any.

1/15/09

REQUISITION

USE TYPEWRITER OR BALLPOINT.
IF BALLPOINT IS USED, PRESS FIRMLY.

1. PROCUREMENT NO./SALE NO.
2. DATE 10/27/08
3. DELIVERY/PICK-UP REQUIRED BY __/__/__
4. BUYER

5. CHECK ALL APPLICABLE:
- [ ] STANDARD PURCHASE (P)
- [ ] SOLE SOURCE (S)
- [x] CAPITAL FUNDED (U)
- [x] PROFESSIONAL SERVICES (E)
- [ ] REPAIR & RETURN (R)
- [ ] UNIT EXCHANGE (X)
- [ ] CONSTRUCTION (C)
- [ ] MASTER AGREEMENT (M)
- [ ] WARRANTY (W)
- [ ] SALE (Q)
- [ ] AMENDMENT (A)
- [ ] CHANGE ORDER (O)
- [ ] BLANKET PURCHASE ORDER (B)

BPO/BSO TYPE = [ ] - STOCK [ ] - NON-STOCK
BPO/BSO EFFECTIVE DATE __/__/__
ESTIMATED NO. RELEASES ___
NO. RELEASING SITES ___ K90926

6. LOCATION:
- [ ] 2067 W. 123rd St. (01) Attn: Storekeeper Blue Island, IL 60406
- [ ] 2741 W. Grand Ave. (02) Attn: Storekeeper Chicago, IL 60612
- [ ] 14th St. East of Indiana (03) Attn: Storekeeper Chicago, IL 60605
- [ ] 147 W. 47th St. (04) Attn: Storekeeper Chicago, IL 60609
- [ ] 127th & Indiana Ave. (05) Attn: Storekeeper Chicago, IL 60628
- [x] 547 W. Jackson Blvd. (06) Attn: Admin. Services 12 Floor East Chicago, IL 60661
- [ ] Other

9. EMERGENCY REQUISITION APPROVAL ___

10. FINAL INSPECTION DEPARTMENT: MECHANICAL

11. SUGGESTED SOURCES (NAME, ADDRESS AND TELEPHONE NUMBER): 000 4076709

A. NIPPON SHARYO USA, INC. 2340 S. ARLINGTON HEIGHTS RD ARLINGTON HEIGHTS, ILL 60005

B. ~~EMPLAN INTERNATIONAL 1300 BERNARD DRIVE BALTIMORE, MARYLAND 21223~~

C. ~~STV SHIPLEY ENGLAND~~ K56576

12. PREVIOUS P.O. #/S.O. #

13. ITEM	ACCOUNTING/DISTRIBUTION CODE [ORGANIZATION] [ACCT. DISTRIB. CODE] [PROJECT #]	15. %	16. QTY.	17. U/M	18. METRA PART #	19. STATUS	20. DESCRIPTION	21. EST. UNIT PRICE	22. EXTENSION	23. LOC.
	-4304-		1	LT			REQUEST FOR PROPOSAL			06
	GRANT PENDING -						FOR MATERIAL ~~SOURCING~~ FITTING			
	FUNDS NOT AVAILABLE						AND MANUFACTURING			
	UNTIL SUMMER '09						ENGINEERING IN THE			
	(FTA/MET)						REHABILITATION OF 176			
	~~Material~~						AMERAIL CARS PER			
	~~Mfg/Engy Consultant~~						SPECIFICATION M-08.009			
	AD - FEB 2 '09		1-2				FEB. 13.			
	PREBID - FEB 24 @ 10:00 A.M.									
	- 147 W. 47TH ST (49TH ST COACH SHOP)									
	QUESTIONS CUT OFF - MARCH 5 @ 4:00 P.M.									
	6574 OPEN - MARCH 25 '09 @ 10:00							5,995	5,673.00	

24. REQUISITIONING DEPARTMENT: MECHANICAL
REQUISITIONER SIGNATURE — APPROVED (DEPT. MGR.)

25. REQUISITION APPROVED: BUDGET CHECKED, & AUTHORITY TO EXPEND FUNDS/TO SELL GRANTED BY:
SIGNATURE/PRINTED NAME/DATE 11/6/08

26. APPROVED FOR PROCESSING
DIRECTOR OF PROCUREMENT/DATE OR DIRECTOR OF PROFESSIONAL SERVICES/CONTRACTS 11/13/08

27. ESTIMATED TOTALS: 7,000.00

PAGE 1 OF 1

RC73 (7/92)

PROCUREM 1/8/09

Proposer Evaluation Record Sheet

PROJECT DESCRIPTION: Professional Services for Material Sourcing and Manufacturing Engineering in the Rehabilitation of 176 Amerall Cars				RFP NO.: 16876	DATE: 9-APR'09	PAGE: 1 of 1	
Firm	Category 1 Understanding of work scope & objectives	Category 2 Approach plan & adherence to time schedules	Category 3 Firm's previous rail equipment experience or other experience.	Category 4 Firm's ability, expertise and resource availability.	Category 5 Adherence to instructions (submission of data).	TOTAL POINTS	RANK
NIPPON SHARYO USA	4	4	5	5	4	22	1
TRANSIT ASSOCIATES	4	3	3	3	4	17	3
VIRGINKAR & ASSOCIATES	4	3	4	3	4	18	2

NOTES:

Richard L. Soukup

William J. Koran

James Stinson

ED REMUS ACTED AS CONTRACTING AGENT

Edward H. Remus

POS - INTERVIEW

Proposer Evaluation Record Sheet

PROJECT DESCRIPTION: Professional Services for Material Sourcing and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars	RFP NO.: 16876	DATE: 5-MAY'06	PAGE: 1 of 1

Firm	Category 1 Understanding of work scope & objectives	Category 2 Approach plan & adherence to time schedules	Category 3 Firm's previous rail equipment experience or other experience.	Category 4 Firm's ability, expertise and resource availability.	Category 5 Adherence to instructions (submission of data).	TOTAL POINTS	RANK
NIPPON SHARYO USA	4	4	5	4	3	20	1
TRANSIT ASSOCIATES	4	3	4	3	4	18	2
VIRGINKAR & ASSOCIATES	4	2	4	3	3	16	3

NOTES:

Richard L. Soukup

William J. Koran

James Stinson

ED REMUS ACTED AS CONTRACTING AGENT

Edward H. Remus

Metra SM

Memorandum

DATE: June 4, 2009

TO: Philip A. Pagano
Executive Director

FROM: F.E. Smalarz, C.P.M., Sr. Director
Materials Management

RE: **Professional Services Contract for Material Sourcing and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars Metra RFP No. 16876**

Date Let: February 2, 2009 **Date Received:** March 25, 2009

Funding Source: Capital

BACKGROUND AND WORKSCOPE:

In February of this year, Metra published a RFP seeking qualified firm(s) to provide Material Sourcing and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars. This firm will assemble Kits of Material and work instructions, and have engineering oversight of the rehabilitation process. All material will be purchased solely by Metra.

The Mechanical Department has primary oversight for this contract and formed the Selection Committee ("Committee") to evaluate the proposal. The Committee consisted of Rich Soukup, Bill Koran and Jim Stinson. Each of the members of the Committee signed the Conflicts Certification stating that they have no real or apparent conflict of interest in evaluating the proposals.

PROPOSALS RECEIVED:

Proposals were requested from 98 firms. A total of three (3) proposals were received. Proposals were received from:

1. Nippon Sharyo USA
2. Transit Associates; and
3. Virginkar & Associates

Metra is the registered service mark for the Northeast Illinois Regional Commuter Railroad Corporation.

PROPOSAL EVALUATION PROCESS: The evaluations were based on the following.

1. Understanding of Work Scope and Objectives;
2. Approach Plan and Adherence to Time Schedules;
3. Firm's Previous Rail Experience or Other Experience;
4. Firm's Ability, Expertise and Resource Availability; and
5. Adherence to Instructions (Submission of Data).

RECOMMENDATION AND JUSTIFICATION:

The Committee reviewed the three (3) proposals for each portion and using the uniform pre-determined scoring process to evaluate and score the proposals, the Committee came to a consensus ranking of the firms. The Committee unanimously selected all three (3) firms to be interviewed.

After the interviews were completed, the Committee, through a consensus scoring, ranked Nippon Sharyo USA the highest. A total of 25 points was the highest obtainable score. The proposals are listed in order of highest ranking: Nippon Sharyo USA (20 pts), Transit Associates (18 pts) and Virginkar & Associates (16 pts).

The Committee recommends that Nippon Sharyo USA, the highest ranked firm be awarded a contract. The contract will be in place for the duration of the rehabilitation project. The contract period is six (6) years. The amount of the contract will be for a non-to-exceed amount of $7,000,000.00. Attached for your review and approval is the 4400 Form that was negotiated with Nippon Sharyo USA and Metra's Mechanical Department.

Your formal approval to proceed is requested.

_____

Approved

Metra SM

Memorandum

DATE: August 6, 2009

TO: Board of Directors

FROM: P.A. Pagano
Executive Director

RE: **Professional Services Contract for Material Sourcing and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars Metra RFP No. 16876**

A professional services contract is being recommended for your approval in response to Metra RFP No. 16876 for Material Sourcing and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars.

In February of this year, Metra published a RFP seeking qualified firm(s) to provide Material Sourcing and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars. This firm will assemble Kits of Material and work instructions, and have engineering oversight of the rehabilitation process. All material will be purchased solely by Metra.

Proposals were requested from 98 firms. A total of three (3) proposals were received. Proposals were received from; Nippon Sharyo, Virginkar & Assoc., Inc., and Transit Associates.

The Evaluation Committee evaluated the proposals utilizing formal established Metra guidelines for selection of professional services. The evaluations were based on the following with each criteria of equal importance: 1) Understanding of Work Scope and Objectives; 2) Approach Plan and Adherence to Time Schedules; 3) Firm's Previous Rail Experience or Other Experience; 4) Firm's Ability, Expertise and Resource Availability; and 5) Adherence to Instructions (Submission of Data).

The Evaluation Committee also used a uniform pre-determined scoring process to evaluate and score the proposals. All three (3) proposers were selected for interviews. Upon completion of the interviews, the Evaluation Committee's consensus is that Nippon Sharyo USA is the highest ranked firm. The three proposals were ranked as follows; Nippon Sharyo (20 pts.), Virginkar & Assoc., Inc. (18 pts.) and Transit Associates (16 pts.).

The Evaluation Committee recommends awarding a professional services contract to Nippon Sharyo USA. The contract period is for six (6) years. The amount of the contract will be for a not-to-exceed amount of $5,995,673.00.

Metra is the registered service mark for the Northeast Illinois Regional Commuter Railroad Corporation.

NIPPON SHARYO U.S.A., INC.

June 11, 2009

Mr. Edward H. Remus, C.P.M
Professional Services / Contracts
547 W. Jackson Blvd. – 11th Floor
Chicago, IL 60661

RE: Request for Proposals (RFP) RFP No. 16876
For the Material Kitting and Manufacturing Engineering in the Rehab of 176 Bi-Level Cars

Dear Mr. Remus,

Nippon Sharyo U.S.A., Inc. (NSUSA) is pleased to submit our Price Proposal to Metra in response to Request for Proposal No. 16876, for the Material Kitting and Manufacturing Engineering in the Rehab of 176 Bi-Level Cars.

Enclosed you will find 1 ORIGINAL (Marked) and 3 copies of **PART 2**: PRICE PROPOSAL. This Proposal includes the pricing for the entire 176 car contract broken down by year. This Proposal is valid for the period of 180 days after submission to Metra.

The NSUSA Team genuinely looks forward to having the opportunity to work with Metra, on this important Project.

Sincerely,

Nippon Sharyo U.S.A., Inc.

Yasuhiko Mochizuki
President, Nippon Sharyo U.S.A., Inc.

Cc: T. Hunt, D. Lawrence, D. Ostapa T. Ishihara, K. Ishigure, T. Oshima, Y. Hirose, Y. Ota, K. Hoshino, K. Kuriyama.

2340 S. Arlington Heights Rd.
Suite 605
Arlington Heights, IL
60005

Tel: 847-228-2700
Fax: 847-228-5530

NIPPON SHARYO U.S.A., INC.

PROPRIETARY / CONFIDENTIAL INFORMATION PROCEDURES

In accordance with RFP 16876, the following procedure for protecting applicable information is incorporated in our Proposal.

Procedure:

Proprietary information is addressed in the submission as follows:

a) The Items which contain proprietary information, have a title page with the following legend:
"This Proposal includes data that shall not be disclosed outside Metra, and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this Proposal". If however, a contract is awarded to this Proposer as a result of, or in connection with, the submission of this data, Metra shall have the right to duplicate, use or disclose the data to the extent provided in the resulting contract. This restriction does not limit Metra's right to use information contained in this data, if it is obtained from another source without restriction.

b) The sheets of data wished to be restricted have the following legend in the lower left and right-hand corner of each page:
"Use or disclosure of data contained on this sheet, is subject to the restriction on the title page of this Proposal".

and / or

"Confidential"

and / or

"Confidentially Marked Drawings and Vertically Margined Text are Proprietary"

Although these notations appear on most pages, not all pages containing the notation include proprietary matter. Only (a) the entire contents of any table and figures stamped "Confidential" and (b) text marked with Vertical lines in the margins are Proprietary.

c) The Term "drawing", as used in the notation, includes all diagrams, drawings, tables and figures.

d) "Proprietary" as used in the notation, includes both (a) trade secrets including any proprietary design, process, data which are exempt from disclosure, and (b) proprietary financial information, which is exempt from disclosure, in accordance with applicable laws.

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

Project Start ~ December 2010

This form is to be used as provided under METRA procedures. It will be executed & submitted with proposals in response to Requests for Proposals*, for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME: Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME: Nippon Sharyo U.S.A., Inc.

ADDRESS: 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME: Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 75.00	$ 7,125.00
Metra Facility Project Instructor		1334	$ 75.00	$ 100,050.00
Project Engineer		390	$ 75.00	$ 29,250.00
Project Administrator		175	$ 65.00	$ 11,375.00
Project Coordinator		250	$ 65.00	$ 16,250.00
Calumet Facility Project Manager		270	$ 65.00	$ 17,550.00
Material Supervisor		450	$ 65.00	$ 29,250.00
Kitting Supervisor		430	$ 65.00	$ 27,950.00
QA / QC Receiving Inspection Supervisor		350	$ 65.00	$ 22,750.00
Transportation Coordinator		200	$ 65.00	$ 13,000.00
QA Personnel		400	$ 65.00	$ 26,000.00
Toyokawa Interior		470	$ 65.00	$ 30,550.00
Toyokawa Electrical		440	$ 65.00	$ 28,600.00
Toyokawa Mechanical		440	$ 65.00	$ 28,600.00
Toyokawa Design Engineer		140	$ 75.00	$ 10,500.00
TOTAL LABOR COST				$ 398,800.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 39,880.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 438,680.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 12,000.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 108,000.00
TOTAL TRAVEL			$ 120,000.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 700,000.00
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 54,940.00
9 TOTAL COSTS			$ 1,313,620.00
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 49,362.00
11. TOTAL ESTIMATED COSTS & PROFI			$ 1,362,982.00

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AUD		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	DT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying i

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 240,000.00
Super Steel Products Corporation	Building Shipping Crates		$ 120,000.00
Super Steel Products Corporation	Administration		$ 12,000.00
Super Steel Products Corporation	Flatbed Leasing		$ 97,000.00
Super Steel Products Corporation	Facility Usage & Utilities		$ 135,000.00
Melko America, Inc.	Freight Costs		$ 96,000.00
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 700,000.00

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank shee		AMOUNT
1-SPECIAL TESTING		$ -
N/A		$ -

		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 54,940.00
		$ -
		$ -
	TOTAL OTHER DIRECT COSTS =	$ 54,940.00

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED IN
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF C(
6/11/2009	Yasuhiko Mochizuki President

METRA 4400 FORM

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2011 ~ December 2011

This form is to be used as provided under METRA procedures. It will be executed & submitted wi proposals in response to Requests for Proposals", for the procurement of professional or persona services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerall Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME Nippon Sharyo U.S.A., Inc.

ADDRESS 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 78.00	$ 7,410.00
Project Engineer		235	$ 78.00	$ 18,330.00
Project Administrator		165	$ 68.00	$ 11,220.00
Project Coordinator		150	$ 68.00	$ 10,200.00
Calumet Facility Project Manager		200	$ 68.00	$ 13,600.00
Material Supervisor		400	$ 68.00	$ 27,200.00
Kitting Supervisor		420	$ 68.00	$ 28,560.00
QA / QC Receiving Inspection Supervisor		350	$ 68.00	$ 23,800.00
Transportation Coordinator		200	$ 68.00	$ 13,600.00
QA Personnel		400	$ 68.00	$ 27,200.00
Toyokawa Design Engineer		100	$ 78.00	$ 7,800.00
TOTAL LABOR COST				$ 188,920.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 18,892.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 207,812.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 6,000.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 54,000.00
TOTAL TRAVEL			$ 60,000.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2			$ 645,400.00
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 41,716.00
9 TOTAL COSTS			$ 954,928.00
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 24,952.80
11. TOTAL ESTIMATED COSTS & PROF			$ 979,880.80

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	OT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packagin		$ 247,200.00
Super Steel Products Corporation	Building Shipping Crates		$ 48,000.00
Super Steel Products Corporation	Administration		$ 12,360.00
Super Steel Products Corporation	Flatbed Leasing		$ 99,910.00
Super Steel Products Corporation	Facility Usage & Utilities		$ 139,050.00
Meiko America, Inc.	Freight Costs		$ 98,880.00
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 645,400.00

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank shee		AMOUNT
1-SPECIAL TESTING		$ -
N/A		$ -

		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 41,716.00
		$ -
		$ -
TOTAL OTHER DIRECT COSTS =		$ 41,716.00

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED II
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF (	
6/11/2009	Yasuhiko Mochizuki	President

METRA 4400 FORM

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2012 ~ December 2012

This form is to be used as provided under METRA procedures. It will be executed & submitted with proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME: Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME: Nippon Sharyo U.S.A., Inc.

ADDRESS: 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME: Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 81.00	$ 7,695.00
Project Engineer		235	$ 81.00	$ 19,035.00
Project Administrator		165	$ 71.00	$ 11,715.00
Project Coordinator		150	$ 71.00	$ 10,650.00
Calumet Facility Project Manager		200	$ 71.00	$ 14,200.00
Material Supervisor		400	$ 71.00	$ 28,400.00
Kitting Supervisor		420	$ 71.00	$ 29,820.00
QA / QC Receiving Inspection Supervisor		350	$ 71.00	$ 24,850.00
Transportation Coordinator		200	$ 71.00	$ 14,200.00
QA Personnel		400	$ 71.00	$ 28,400.00
Toyokawa Design Engineer		100	$ 81.00	$ 8,100.00
TOTAL LABOR COST				$ 197,065.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 19,706.50
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 216,771.50
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

		$ -	$ -
TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 3,000.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 27,000.00
TOTAL TRAVEL			$ 30,000.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 663,322.00
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 43,019.35
9 TOTAL COSTS			$ 953,112.85
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 25,979.09
11. TOTAL ESTIMATED COSTS & PROFI			$ 979,091.94

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	OT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying il

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 254,616.00
Super Steel Products Corporation	Building Shipping Crates		$ 48,000.00
Super Steel Products Corporation	Administration		$ 12,730.80
Super Steel Products Corporation	Flatbed Leasing		$ 102,907.30
Super Steel Products Corporation	Facility Usage & Utilities		$ 143,221.50
Melko America, Inc.	Freight Costs		$ 101,846.40
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 663,322.00

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank sheet	AMOUNT

1-SPECIAL TESTING		$ -
N/A		$ -
		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 43,019.35
		$ -
		$ -
	TOTAL OTHER DIRECT COSTS =	$ 43,019.35

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accou ting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) an (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED II
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF C	
6/11/2009	Yasuhiko Mochizuki	President

METRA 4400 FORM

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2013 ~ December 2013

This form is to be used as provided under METRA procedures. It will be executed & submitted with proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME Nippon Sharyo U.S.A., Inc.

ADDRESS 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 84.00	$ 7,980.00
Project Engineer		235	$ 84.00	$ 19,740.00
Project Administrator		165	$ 74.00	$ 12,210.00
Project Coordinator		150	$ 74.00	$ 11,100.00
Calumet Facility Project Manager		200	$ 74.00	$ 14,800.00
Material Supervisor		400	$ 74.00	$ 29,600.00
Kitting Supervisor		420	$ 74.00	$ 31,080.00
QA / QC Receiving Inspection Supervisor		350	$ 74.00	$ 25,900.00
Transportation Coordinator		200	$ 74.00	$ 14,800.00
QA Personnel		400	$ 74.00	$ 29,600.00
Toyokawa Design Engineer		100	$ 84.00	$ 8,400.00
TOTAL LABOR COST				$ 205,210.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 20,521.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 225,731.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

		$ -	$ -
TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 1,500.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 10,000.00
TOTAL TRAVEL			$ 11,500.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 672,511.64
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 43,886.08
9 TOTAL COSTS			$ 953,628.72
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 26,961.71
11. TOTAL ESTIMATED COSTS & PROFI			$ 980,590.43

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	DT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying it

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packagin		$ 252,984.48
Super Steel Products Corporation	Building Shipping Crates		$ 48,000.00
Super Steel Products Corporation	Administration		$ 13,112.72
Super Steel Products Corporation	Flatbed Leasing		$ 105,994.51
Super Steel Products Corporation	Facility Usage & Utilities		$ 147,518.14
Meiko America, Inc.	Freight Costs		$ 104,901.79
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 672,511.64

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank sheet	AMOUNT

1-SPECIAL TESTING		$ -
N/A		$ -
		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 43,886.08
		$ -
		$ -
	TOTAL OTHER DIRECT COSTS =	$ 43,886.08

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accou ting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) an (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED II
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF C
6/11/2009	Yasuhiko Mochizuki President

METRA 4400 FORM

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2014 ~ December 2014

This form is to be used as provided under METRA procedures. It will be executed & submitted wit proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME: Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME: Nippon Sharyo U.S.A., Inc.

ADDRESS: 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME: Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		95	$ 88.00	$ 8,360.00
Project Engineer		235	$ 88.00	$ 20,680.00
Project Administrator		165	$ 78.00	$ 12,870.00
Project Coordinator		150	$ 78.00	$ 11,700.00
Calumet Facility Project Manager		200	$ 78.00	$ 15,600.00
Material Supervisor		400	$ 78.00	$ 31,200.00
Kitting Supervisor		420	$ 78.00	$ 32,760.00
QA / QC Receiving Inspection Supervisor		350	$ 78.00	$ 27,300.00
Transportation Coordinator		200	$ 78.00	$ 15,600.00
QA Personnel		400	$ 78.00	$ 31,200.00
Toyokawa Design Engineer		100	$ 88.00	$ 8,800.00
TOTAL LABOR COST				$ 216,070.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 21,607.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 237,677.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

		$ -	$ -
TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 1,500.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 10,000.00
TOTAL TRAVEL			$ 11,500.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 662,446.97
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 43,925.85
9 TOTAL COSTS			$ 955,549.82
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 28,160.28
11. TOTAL ESTIMATED COSTS & PROFI			$ 983,710.10

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	DT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying it

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 260,574.01
Super Steel Products Corporation	Building Shipping Crates		$ 19,200.00
Super Steel Products Corporation	Administration		$ 13,506.10
Super Steel Products Corporation	Flatbed Leasing		$ 109,174.34
Super Steel Products Corporation	Facility Usage & Utilities		$ 151,943.68
Meiko America, Inc.	Freight Costs		$ 108,048.84
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 662,446.97

EXHIBIT B - OTHER DIRECT COSTS (Specify, If more space needed, use blank sheet	AMOUNT

1-SPECIAL TESTING		$ -
N/A		$ -
		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 43,925.85
		$ -
		$ -
	TOTAL OTHER DIRECT COSTS =	$ 43,925.85

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED IN
26	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF C
6/11/2009	Yasuhiko Mochizuki President

METRA 4400 FORM

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS

January 2015 ~ Project Completion

This form is to be used as provided under METRA procedures. It will be executed & submitted with proposals in response to Requests for Proposals", for the procurement of professional or personal services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions.

CONTRACT NO. 16876

METRA TASK NO.

METRA TASK NAME Material Kitting and Manufacturing Engineering in the Rehabilitation of 176 Amerail Cars

METRA TASK DESCRIPTION

COMPANY-CONSULTANT NAME Nippon Sharyo U.S.A., Inc.

ADDRESS 2340 S. Arlington Heights Rd., Suite 605, Arlington Heights, IL 60005

CONTACT NAME Mr. Tom Hunt

DETAIL DESCRIPTION		ESTIMATED HOURS	MAX RATE PER HOUR	TOTAL ESTIMATED COST ($)
1. DIRECT LABOR (specify)				
Project Manager		50	$ 91.00	$ 4,550.00
Project Engineer		120	$ 91.00	$ 10,920.00
Project Administrator		120	$ 81.00	$ 9,720.00
Project Coordinator		120	$ 81.00	$ 9,720.00
Calumet Facility Project Manager		180	$ 81.00	$ 14,580.00
Material Supervisor		360	$ 81.00	$ 29,160.00
Kitting Supervisor		360	$ 81.00	$ 29,160.00
QA / QC Receiving Inspection Supervisor		320	$ 81.00	$ 25,920.00
Transportation Coordinator		180	$ 81.00	$ 14,580.00
QA Personnel		360	$ 81.00	$ 29,160.00
Toyokawa Design Engineer		50	$ 91.00	$ 4,550.00
TOTAL LABOR COST				$ 182,020.00
2. BURDEN (Overhead Rate 10 %- specify)	BURDEN RATE X TOTAL DIRECT LABOR			$ 18,202.00
TOTAL DIRECT COSTS (LABOR & BURDEN)				$ 200,222.00
3. DIRECT MATERIAL				
				$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -
			$ -	$ -

		$ -	$ -
TOTAL MATERIAL			$ -
4. SPECIAL TESTING (Specify in Exhibit B on Page 2)			$ -
5. SPECIAL EQUIPMENT (If direct charge - specify in Exhibit B on Page 2)			$ -
6. TRAVEL (If direct charge)			
a. TRANSPORTATION		$ -	$ 1,500.00
b. PER DIEM OR SUBSISTENCE		$ -	$ 7,000.00
TOTAL TRAVEL			$ 8,500.00
7. SUBCONTRACTS or/and DBE SUBCONTRACTS (Specify in Exhibit A on Page 2)			$ 446,125.69
8. OTHER DIRECT COSTS (Specify in Exhibit B on Page 2)			$ 31,407.28
9 TOTAL COSTS			$ 686,254.97
10. FIXED FEE OR PROFIT (10% of TOTAL DIRECT COSTS)			$ 23,162.93
11. TOTAL ESTIMATED COSTS & PROFI			$ 709,417.90

METRA 4400 FORM

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE RATE INFORMATION		
A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUNTING PERIOD COVERED
B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AU		C. DO YOUR CONTRACTS OVERHEAD RATES ?

D. (If no Government rates have been established, furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	DT. INDIRCT EXPENSE PO	BASE FOR TOTAL

EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying it

NAME AND ADDRESS OF SUBCONTRACTOR(S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	AMOUNT
Super Steel Products Corporation	Kitting Material & Packaging		$ 182,401.80
Super Steel Products Corporation	Building Shipping Crates		$ 3,840.00
Super Steel Products Corporation	Administration		$ 9,454.27
Super Steel Products Corporation	Flatbed Leasing		$ 76,422.04
Super Steel Products Corporation	Facility Usage & Utilities		$ 98,373.39
Meiko America, Inc.	Freight Costs		$ 75,634.19
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
			$ -
TOTAL SUBCONTRACTS =			$ 446,125.69

EXHIBIT B - OTHER DIRECT COSTS (Specify, if more space needed, use blank sheet	AMOUNT

1-SPECIAL TESTING		$ -
N/A		$ -
		$ -
		$ -
		$ -
		$ -
2-SPECIAL EQUIPMENT		$ -
N/A		$ -
		$ -
		$ -
3- OTHER COSTS		$ -
Contingency Plan		$ 31,407.28
		$ -
		$ -
	TOTAL OTHER DIRECT COSTS =	$ 31,407.28

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has not, employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED IN
28	New York

DATE	SIGNATURE AND TITLE OF AUTHORIZED REPRESENTATIVE OF C
6/11/2009	Yasuhiko Mochizuki President

METRA 4400 FORM

REQUISITIONING OF MATERIALS & SERVICES

I. PURPOSE

This procedure provides instructions for both the normal requisitioning of Materials and/or Services, and instructions for emergency requisitioning of Materials and/or Services. Materials and/or Services requested in an approved Purchase Requisition will be procured by, or otherwise at the direction of, the Procurement Division or Professional Services/ Contracts Division (as applicable) pursuant to the applicable Metra procedure. See:

- PU-04-RC – Informal Quotations and Awards;
- PU-05-RC – Formal Quotations and Awards;
- PU-06-RC – Professional Services Contracts (Grant Funded, Non Brooks Method);
- PU-07-RC – Professional Services Contracts (Non Grant Funded);
- PU-08-RC – Architectural and Engineering Services Contracts (Brooks Method);
- PU-08-RC – Blanket Purchase Orders and Releases;
- PU-13-RC – Direct Purchases;
- PU-14-RC – Formal Solicitation Award For Construction Contracts;
- PU-16-RC – Procurement of Rolling Stock; or
- PU-21-RC – Procurement Card Purchases.

II. POLICY

GENERAL:

This procedure should be utilized in the procurement of all Materials and/or Services. Requisitions for Materials and/or Services will be submitted by using a Purchase Requisition. Non-inventory Material is to be requisitioned separately from inventory Material. Personnel making unauthorized purchase commitments may be held financially liable and may also be subject to disciplinary action, including employment termination.

All procurement transactions will be conducted in a manner providing full and open competition (except as may be necessary in connection with an Emergency Requisition). The Procurement Division (or its designee) is responsible for negotiating with Bidders with respect to the procurement of requested Materials and the Professional Services/ Contracts Division (or its designee) is responsible for negotiating with Bidders with respect to the procurement of requested Services. The Requisitioner/User may not negotiate with Bidders except as necessary in connection with the permitted procurement of Materials and/or Services by Direct Purchases or purchases made by Procurement Card.

Purchase Requisitions that are FTA funded, must adhere to all of the applicable requirements set forth in Circular 4220.1F (attached and incorporated herein as Exhibit I) as well as all applicable Metra procurement procedures, business regulations, and other rules and regulations. Metra prohibits geographic preferences, except in those cases where applicable

- Review Purchase Requisitions received from Budget Authority. Return Purchase Requisitions to Requisitioner/User which are incomplete, incorrect, or reflect improper approvals for corrections and resubmission, as appropriate.
- If requested Materials and/or Services may not be procured by Direct Purchase or by Procurement Card (as determined by Procurement Division or Professional Services/Contract Divisions, as applicable) make final determination, consistent with past practice, as to whether Bidder(s) are to be selected solely on the basis of price (i.e. Materials and/or Services to be acquired by Sealed Bids/Invitation for Bid (IFB) in accordance with applicable procurement policies and procedures), or whether other factors should be considered (i.e. Materials and/or Services to be acquired by a Request for Proposal (RFP) in accordance with applicable procurement policies and procedures).
- Forward approved Purchase Requisitions to Procurement Department (if for Materials) and/or Professional Services/Contract Divisions (if for Services). Additionally, for Purchase Requisitions requesting Services to be acquired by RFP, determine if Brooks Method should or should not be utilized in procuring such Services, and alert Professional Services/Contract Divisions as to determination.
- Maintain a copy of all Purchase Requisitions, record of Brooks Method determination (as applicable), and copies of all relevant documents in respective procurement file.

Procurement Division or Professional Services/Contract Divisions (as applicable)

- Oversee METRA Purchase Requisition procedures and systems.
- Review Purchase Requisitions received from Materials Management Department. Return Purchase Requisitions to Requisitioner/User which are incomplete, incorrect, or reflect improper approvals for corrections and resubmission, as appropriate.
- If Purchase Requisition acceptable, first determine whether requested Materials and/or Services may be procured by Direct Purchase or by Procurement Card pursuant to applicable procurement policies and procedures (see above) and, if so, coordinate with Requisitioner/User in directly procuring the requested Materials and/or Services.
- If requested Materials and/or Services may be procured by Direct Purchase or by Procurement Card, approved Purchase Requisition and appoint Procurement Agent to procure such Materials and/or Services Card pursuant to applicable procurement policies and procedures (see above).
- Coordinate with Requisitioner/User regarding status of the procurement of the requested Materials and/or Services by Procurement Agent.
- Retain a copy of all processed Purchase Requisitions, explanatory memorandums (if any), including determination of the method of procurement, and all other documents or information submitted with respect to a Purchase Requisition (if any), and maintain in respective procurement file.

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section A SOLICATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Purchase Requisition	
2.	Rationale for Method of Procurement: _____	
3.	Specifications/Statement of Work	
4.	Justification for Procurement	
5.	Term of Contract Does Not Exceed 5 Years.	
6.	Cost Estimate	
7.	Set Aside Decision/DBE Goal	
8.	Justification of Procurement Method	
9.	List of Prospective Proposers	
10.	Proof of Publication	
11.	Copy of RFP	
12.	Addenda	
13.	Pre-proposal Minutes & List of Attendees	
14.	Correspondence with Bidders	
15.	Interoffice Correspondence	
16.	Review of Responsiveness (On Bid Tabulation)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section B AWARD DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Copy of Each Proposal (In Storage)	
2.	Proposal Tabulation Sheet	
3.	Evaluation Team Certification Forms	
4.	Evaluation Sheet/Matrix	
5.	Determination of Competitive Range	
6.	Invitation of Oral Interviews/Presentations	
7.	Notice of Rejection	
8.	Minutes of Discussions	
9.	Correspondence with Proposers	
10.	Cost or Price Analysis	
11.	Justification for Contract Type	
12.	Negotiation Memorandum	
13.	Copy of Each Best and Final Offer (If Applicable)	
14.	Award Recommendation Memorandum	
15.	Board Consent	
16.	Legal Review of Contract Documents (Routing Slip)	
17.	Notice of Award	
18.	Notice to Unsuccessful Proposers	
19.	Procurement Summary	
20.	Bonds (If Applicable)	
21.	Certification of Insurance	
22.	Contract Document (Drawings not Required)	
23.	Notice to Proceed	
24.	Contract/Purchase Order	

Contract No.: _____

Contract Administrator: _____
Date: _____

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section C CONTRACT ADMINISTRATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Post Award Conference	
2.	Quality Assurance Records	
3.	Change Notices/Modification/Change Orders	
4.	Periodic Status Reports	
5.	Site Visit Reports	
6.	Termination/Stop Work Notices or Resolution Plan	
7.	Notice of Claims	
8.	Release of Claims/Bonds	
9.	Assignments	
10.	Notice of Final Payment	
11.	Audit Reports	
12.	Liquidated Damages	
12.	Close out Documentation	

Contract No.: _____

Contract Administrator: _____

Date: _____

findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

Out of Scope Changes (Element #44):

Metra's Revised Response: The PSR referenced three Metra contracts with changes that were not within the scope of the original contract and stated that they should have been treated as sole source procurements. Metra agreed with that assessment. The PSR also noted that Metra's original response was not adequate because it did not address the original reviewer's requirement that "Metra implement a process, procedures, rules or checks and balances to ensure that sole source amendments are properly reviewed." In response to this deficiency, Metra's has revised its procedures to indicate that a change order that is not within the scope of the original contract is to be considered a cardinal change or sole source procurement (see attached proposed revised PU-10-RC, Change Orders).

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

44. Out of Scope Changes

Basic Requirement: Chapter VI, Section 3.i. (l)(b) of FTA C4220.1F indicates that a contract change that is not within the scope of the original contract is to be considered a sole source procurement. The grantee must justify why an amendment was the only feasible course of action, and must comply with FTA requirements for cost analysis and profit negotiation.

Discussion: The reviewing contractor noted three (3) contract changes in the procurements reviewed that were out of scope and were not treated as sole source procurements. In the installation and service of core routers the contract value was increased from $120,000 to $220,000, an increase of 83%. A procurement for ticket vending machines increased the number of machines from 14 to 29; there was no documentation that these increases were evaluated. In the procurement for an ADA station upgrade, the installation of bike racks was added to the scope of work without the proper sole source justification.

- Best Practices: A change order that is not within the scope of the original contract is considered a cardinal change or a sole source procurement by the FTA. Significant case law exists to support the definition(s) of out of scope changes. If the modification is so substantive that it changes the complexion of the deal, it is out of scope. If the modification might have been fairly and reasonably within the contemplation of the parties at the time the contract was signed it may be in scope. Questions to be asked to warn of out of scope changes are:
- Is the end item or service substantially changed (by an individual modification or as a cumulative effect of several modifications)?
- How does the change price compare to the contract price? Is it substantial?
- What resources are required to accomplish the new work? A different set of resources signals an out of scope change.
- Would the competitive factors be different if the change were proposed as part of the original contract?
- Would different firms have bid?

See Appendix K for an example of a form to be used to assess each contract change.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The review noted three (3) contract change orders in procurements that were out of scope and were not treated as sole source procurements.

The change order for the installation and service of core routers consisted of extending the contract completion date by one year at the same pricing, and to increase the value of the contract for the work performed during this period. The fees of the original contract remained the same during the extended period of performance.

Metra concurs and the processing for the additional routers should have been done as a sole source.

In reviewing the ticket vending machine file for the change order, Metra found that the number of machines was increased from 15 to 29, and the file has documentation dated March 26, 2010 from Metra's Audit Department. The documentation states that the "quoted price for the Change Order appears reasonable." The additional 14 vending machines were ordered at the direction of the Executive Director.

Metra concurs and the processing for the additional machines should have been done as a sole source.

The change order for the ADA improvements at the BNSF-Route 59 station upgrade consisted of widening the existing platform, adding additional lighting, sidewalk widening, landscaping, and replacing an existing bike rack that was in place prior to the improvements. The bike rack was removed for the improvements but was damaged in the process and was not salvageable.

Metra concurs and the processing for the bike rack should have been done as a sole source.

Reviewing Contractor's Response: Metra's response is not adequate because it doesn't address the deficiency. There is no process, procedures, rules, or checks and balances proposed to ensure that sole source amendments are properly reviewed. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

CHANGE ORDERS

I. PURPOSE

This procedure contains policies and guidelines for altering: 1) the terms and/or conditions of a construction contract or professional services contract; 2) the dollar amount of an operations purchase order over $500.00, a professional services contract, and/or a construction contract; and 3) the dollar amount of a capital purchase order of any value.

II. POLICY

Changes in the dollar value of a contract or purchase order will be made in accordance with instructions set forth in this procedure and will be authorized as outlined in FI-02-RC for the appropriate dollar amounts. All Change Order Requests and support information should be initiated by the appropriate Director and/or Department Head using the Purchase Order/Contract Modification Worksheet (Exhibit I).

The Change Order Request Form (Exhibit II) will be used for contract change orders only. For purchase orders, a Change Order must be submitted on a Purchase Requisition (RC 73) (See Exhibit I in PU-02-RC, Requisitioning of Materials and Services).

Undocumented and oral changes to contracts or purchase orders are prohibited. Change Orders must be issued prior to work being done or additional material purchased, except in instances where time delays in work activities appear unacceptable and/or will result in increased costs. In the instances when a Change Order cannot be processed before the additional work is started, a Purchase Order/Contract Modification (CM) will be issued. The use of a CM allows the expiration date of a contract or purchase order to be extended, and acknowledges the contractor's estimate of its price to perform the additional work, subject to written approval by Metra's Executive Director, without waiving any rights Metra may have in conjunction with processing the Change Order.

The Executive Director, or his designee, will notify the Board of Directors of approved Change Orders that increase the amount of the contract by $10,000.00 or greater at the regular board meeting following the final approval of the Change Order.

With respect to operating (as opposed to capital) purchase orders, over-shipments costing under $500.00 should be verified by the buyer and accepted/paid without the formal Change Order process to minimize the time spent returning small over-shipments of material. However, if the over-shipment increases the total of the purchase order from under $10,000.00 to $10,000.00 or more, a Change Order is necessary. For capital purchase orders, a Change Order must be processed for any dollar amount. A Change Order that is not within the scope of the original contract is considered a cardinal change or a sole source procurement. If the modification is so substantive that it changes the complexion of the deal, it is out of scope. If the modification might have been fairly and

reasonably within contemplation of the parties at the time the contract was signed it may be in scope. See the appropriate procedure to handle a sole source procurement:
PU-04-RC "Informal Quotations and Awards"
PU-05-RC "Formal Quotations and Awards"
PU-09-RC "Blanket Purchase Orders and Releases"
PU-14-RC "Formal Solicitation Award for Construction Contracts"

III. DEFINITIONS

Amendment: See Glossary

Blue Folder: See Glossary

Change Order: See Glossary

Purchase Order Modification or Contract Modification: See Glossary

Requisition: See Glossary

Requisitioner/User: See Glossary

IV. RESPONSIBILITIES

Requisitioner/User
Initiates the change order process, if appropriate with, contract modification process using Purchase Order Contract Modification Worksheet (Exhibit I). Assures that the cost estimate and/or time extension for the Contract Modification is prepared, and that the price has been documented, negotiated, and agreed upon. Prepares a Change Order Authorization (Exhibit III), Change Order Request (Exhibit II), or Purchase Requisition (RC73); (see Exhibit I in PU-02-RC, Requisition of Materials and Services), and completes a Metra Procurement Summary (see Exhibit VI in PU-06-RC, Professional Services Contracts) and recommendation memorandum (see Exhibit IV) to the Executive Director justifying the contract / purchase order changes.

General Development Department
Reviews, monitors, and ensures that capital funds are available and that funding agency requirements are met for all Change Order requests. Obtains FTA/IDOT concurrences.

Progress Payments (Element #46):

Metra's Revised Response: The PSR referenced nine (9) Metra contracts that were deficient. The reviewer indicated that Metra had two different standard clauses for progress payments; in one version of the clause the provision that title will transfer to Metra upon payment is included, and in the second version, the language is missing. Effective immediately, the boiler plate language that provides for title to pass to Metra once payment is made is being incorporated into the Construction and Proposal/Contract boiler plate where this specific language was missing. The language states: "When progress payments are utilized, Metra will receive title to property (materials, work in progress, and finished goods) for which progress payments are made. Such title must be free of all encumbrances, or Metra must receive a priority lien secured pursuant to Article 9 of the Uniform Commercial Code and other applicable State laws or local ordinances. To the extent any Federal funds are expended through progress payments, the rights of the United States in property for which the progress payments were made must be paramount to any rights arising under State law. Metra will not provide for progress payments if the contract items are quick turnover types of materials for which progress payments are not customary commercial practice. Metra will exclusively determine when progress payments are applicable."

Additionally, all current solicitations will also have the clause added if it is missing. Proposed revised PU-02-RC (see attached) also requires the clause to be incorporated into the solicitation documents if progress payments are allowed. The nine deficient contracts will be amended to incorporate the standard language also.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

REQUISITIONING OF MATERIALS & SERVICES

I. PURPOSE

This procedure provides instructions for both the normal requisitioning of Materials and/or Services, and instructions for emergency requisitioning of Materials and/or Services. Materials and/or Services requested in an approved Purchase Requisition will be procured by, or otherwise at the direction of, the Procurement Division or Professional Services/ Contracts Division (as applicable) pursuant to the applicable Metra procedure. See:

- PU-04-RC – Informal Quotations and Awards;
- PU-05-RC – Formal Quotations and Awards;
- PU-06-RC – Professional Services Contracts (Grant Funded, Non Brooks Method);
- PU-07-RC – Professional Services Contracts (Non Grant Funded);
- PU-08-RC – Architectural and Engineering Services Contracts (Brooks Method);
- PU-08-RC – Blanket Purchase Orders and Releases;
- PU-13-RC – Direct Purchases;
- PU-14-RC – Formal Solicitation Award For Construction Contracts;
- PU-16-RC – Procurement of Rolling Stock; or
- PU-21-RC – Procurement Card Purchases.

II. POLICY

GENERAL:

This procedure should be utilized in the procurement of all Materials and/or Services. Requisitions for Materials and/or Services will be submitted by using a Purchase Requisition. Non-inventory Material is to be requisitioned separately from inventory Material. Personnel making unauthorized purchase commitments may be held financially liable and may also be subject to disciplinary action, including employment termination.

All procurement transactions will be conducted in a manner providing full and open competition (except as may be necessary in connection with an Emergency Requisition). The Procurement Division (or its designee) is responsible for negotiating with Bidders with respect to the procurement of requested Materials and the Professional Services/ Contracts Division (or its designee) is responsible for negotiating with Bidders with respect to the procurement of requested Services. The Requisitioner/User may not negotiate with Bidders except as necessary in connection with the permitted procurement of Materials and/or Services by Direct Purchases or purchases made by Procurement Card.

Purchase Requisitions that are FTA funded, must adhere to all of the applicable requirements set forth in Circular 4220.1F (attached and incorporated herein as Exhibit I) as well as all applicable Metra procurement procedures, business regulations, and other rules and regulations. Metra prohibits geographic preferences, except in those cases where applicable Federal statues expressly mandate or encourage geographic preference. Metra also prohibits the cost plus a percentage of cost and percentage of construction cost methods of contracting. If there is a liquidated damages provision in a proposed contract, any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise. When progress payments are utilized the solicitation documents must indicate that Metra will receive title to property (materials, work in progress, and finished goods).

Options may be included in a contract, provided however that Metra shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. If options are used, the option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a Sole Source procurement for purposes of this procedure. In exercising an option, Metra must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded. An option may not be exercised unless it has been determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

NARRATIVE DESCRIPTION OF PROCESS:

The process for requisitioning Materials and/or Services shall be initiated by the Requisitioner/User who shall prepare and submit a Purchase Requisition requesting such Materials and/or Services to the appropriate Budget Authority for approval. With respect to requisitioning Materials, before submitting a Purchase Requisition the Requisitioner/User shall first ascertain whether the desired Materials are already available by accessing the Materials System.

Purchase Requisitions that contain a specified Sole Source must be accompanied by a written memorandum explaining the reason(s) for such Sole Source restriction. Emergency Requisitions must be accompanied by a memorandum and supporting evidence, acceptable to the appropriate Budget Authority, in its sole discretion, fully justifying the requested Materials and/or Services and the urgency for such Materials and/or Services. Each such explanatory memorandum must be signed by the Manager of the applicable Department, Division, or Office, or the Deputy Executive Director, if appropriate, and the Executive Director.

III. DEFINITIONS

Bidder: See Glossary.

- Maintain a record of all Purchase Requisitions and purchases of Materials and Services to ensure that budget limitations are not exceeded.

Materials Management Department

- Review Purchase Requisitions received from Budget Authority. Return Purchase Requisitions to Requisitioner/User which are incomplete, incorrect, or reflect improper approvals for corrections and resubmission, as appropriate.
- If requested Materials and/or Services may not be procured by Direct Purchase or by Procurement Card (as determined by Procurement Division or Professional Services/Contract Divisions, as applicable) make final determination, consistent with past practice, as to whether Bidder(s) are to be selected solely on the basis of price (i.e. Materials and/or Services to be acquired by Sealed Bids/Invitation for Bid (IFB) in accordance with applicable procurement policies and procedures), or whether other factors should be considered (i.e. Materials and/or Services to be acquired by a Request for Proposal (RFP) in accordance with applicable procurement policies and procedures).
- Forward approved Purchase Requisitions to Procurement Department (if for Materials) and/or Professional Services/Contract Divisions (if for Services). Additionally, for Purchase Requisitions requesting Services to be acquired by RFP, determine if Brooks Method should or should not be utilized in procuring such Services, and alert Professional Services/Contract Divisions as to determination.

Procurement Division or Professional Services/Contract Divisions (as applicable)

- Oversee METRA Purchase Requisition procedures and systems.
- Review Purchase Requisitions received from Materials Management Department. Return Purchase Requisitions to Requisitioner/User which are incomplete, incorrect, or reflect improper approvals for corrections and resubmission, as appropriate.
- If Purchase Requisition acceptable, first determine whether requested Materials and/or Services may be procured by Direct Purchase or by Procurement Card pursuant to applicable procurement policies and procedures (see above) and, if so, coordinate with Requisitioner/User in directly procuring the requested Materials and/or Services. When progress payments are utilized the solicitation documents must indicate that Metra will receive title to property (materials, work in progress, and finished goods).
- If requested Materials and/or Services may be procured by Direct Purchase or by Procurement Card, approved Purchase Requisition and appoint Procurement Agent to procure such Materials and/or Services Card pursuant to applicable procurement policies and procedures (see above).

Cost Plus Percentage of Cost (Element #48):

Metra's Revised Response: The PSR referenced three Metra contracts pertaining to this Element. The deficiencies identified for the three contracts are as follows: in two (2) cost-plus-fixed-fee procurements for construction management services, there was a fixed-fee by task order rather than an overall fixed-fee for the contract; and with respect to the procurement for the ticket vending machines, the contract was documented as a cost-plus-fixed-fee contract, but no fixed-fee was noted in the compensation provisions.

The V3 and AECOM engineering contracts were for construction management services. The awards were for blanket type contracts, and a not-to-exceed total dollar amount was determined and documented **before** the solicitation process started. See the attached RFP that identified the services to be awarded and the blanket not-to-exceed dollar value.

Metra stated in its original response that the hourly rates and overhead rates were negotiated at the time of the task assignment and not prior to the contract execution. This is not accurate and we apologize. The V3 contract is a blanket type contract (construction management services for the Union Pacific North Line Bridges project) with a total value not to exceed $8,400,000. Tasks are being individually assigned as the project progresses. Prior to any task assignment, the scope for the respective task is finalized and the total hours needed to complete the respective task is negotiated. Please see the attached contract with the first three pages and the signatory page dated 9/25/09 and the negotiated Cost Review dated 9/11/09 that was part of the contract file, which indicates that the hourly and overhead rates were negotiated prior to the execution of the contract. Please note that Metra has revised its procedures to require case-by-case determination of the type of contract and compensation (see attached proposed revised PU-08-RC).

With respect to the AECOM contract (construction management services for Belmont Road), as noted above, the awards were for blanket type contracts and a not-to-exceed total dollar amount was determined and documented before the solicitation process started. Metra concurs with the PSR that since there is a single task, the contract should be a fixed-fee and should not have been issued as a blanket type contract. We have initiated the internal process to amend the contract and it is estimated that it will take approximately one month to finalize the amendment. Additionally, we have identified nine (9) contracts that should have been a single task, fixed-fee contract and not issued as a blanket type contract. Those contracts are:

(1) K86581 (Laramore, Douglas & Popham)
(2) K86587 (Teng & Assoc.)
(3) K86593 (LTK Engineering)
(4) K86596 (Stantec Consulting Services)
(5) K86600 (STV)
(6) K91048 (AECOM)
(7) K91240 (LTK Engineering)

(8) K91970 (Laramore, Douglas & Popham)
(9) K91975 (STV)

We have initiated the internal process to amend the contracts listed above and it is estimated that it will take approximately two months to finalize each of the amendments. All amended documentation will be included in each contract's respective file.

With respect to the third contract (GFI Genfare), the PSR stated that it was documented as a cost-plus-fixed-fee contract; however, no fixed-fee was noted in the compensation provisions. We agree with this discrepancy, but please note that the firm-fixed-price was stated in the executed contract (see attached Agreement, Compensation Section 2). In addition, Metra has revised its procedures to require case-by-case determination of the type of contract and compensation (see attached proposed revised PU-06-RC).

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

REQUEST FOR PROPOSAL

EXHIBIT 1

Professional Construction Management Services for Bridges, Retaining Walls, Substations and Commuter Rail Stations.

RFP NO.: 01793

PROPOSAL DUE DATE: June 30, 2009 BY 10:00 a.m.

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION D/B/A METRA
PROFESSIONAL SERVICES/CONTRACTS
547 WEST JACKSON BOULEVARD
CHICAGO, IL 60661

I. INTRODUCTION

Metra, the Commuter Rail Division of the Regional Transportation Authority, is funding construction management services for several projects under this "Master Request for Proposal" (MRFP). This MRFP is for only construction management contracts for various projects within Metra's Engineering Department. A second RFP for all other engineering services will be put out after this RFP.

Included in this MRFP are requests for Construction Management services for various bridges buildings, stations and parking lot construction projects. Possible projects intended for this contract are one RID bridge and retaining wall project; one MED bridge, station and substation project; one BNSF Belmont Road grade separation project; one UPRR bridge, retaining wall and station project; and one UP North Line project consisting of the reconstruction of bridges, retaining walls and the Ravenswood station. We anticipate awarding the following contracts: 1 @ $1,100K, 1 @ $1,140K, 1 @ $1,200K, 1@ $2,500K for the Belmont grade separation, 3 year duration (see Section III-A-3 of this document for a more detailed description) and 1 @ $8,400K-UP North Line project 3 year duration (see Section III-A-3 of this document for a more detailed description). DBE Goal 25%.

We intend to award the above contracts under this MRFP for the Engineering Department. Note that Metra reserves the right to award more, fewer, or none of the estimated number of contracts listed above. In addition, the amounts stated for the contracts are estimates only and Metra reserves the right to award contracts in greater or lesser amounts. DO NOT indicate interest in the above construction management services if you are neither interested nor qualified for; this will only cause unnecessary work and delay to all parties involved.

All proposals shall have the cover of the book clearly marked as **"RFP 1488-09 Engineering Department-Construction Management Services"**

Attachment A should be filled out. This is the list of all your subconsultants and their assigned scope of work. A project consultant and subconsultant listing form (Attachment A) has been included for your firm's completion and submission.

After you have filled out Attachment A, attach a copy of table immediately behind the cover letter in your proposal that you submit. A copy of your proposal will be sent to the appropriate staff for review.

Your proposal must provide the information as outlined in this MRFP. Your proposal will then be evaluated using the rating system as detailed in Section VII of this MRFP.

B. Request for Specific Services

For each specific task in the blanket contract, Metra shall submit to the consultant a "Request for Specific Services." Based on the "Request for Specific Services," the consultant shall submit in writing, within ten (10) working days, for approval an estimated cost, and manpower analysis outlined on RTA Form "4400" to Metra. Approval of such cost and direction from Metra, in writing, shall effectuate the performance of services under this agreement. The Consultant will be compensated based on actual costs incurred in connection with each "Request for Specific Services" up to the maximum amount authorized. Preparation of the cost estimate and manpower analysis shall not be compensable service under this Agreement.

C. Contract Amount

This agreement is limited to the maximum contract amount, in total compensation paid for professional services, including all project meetings, all direct and indirect expenditures and fees in connection with the project.

If no "Request for Specific Services" is issued, this agreement shall be terminated without further obligation by either of the parties, but the Consultant shall be compensated for services already completed. The limitation shall not be construed to entitle the Consultant to the full amount of contract set under this agreement.

E. Personnel Assigned to Projects

The Consultant shall be required to provide a list of employees and subconsultants that will be assigned to the projects performed under this contract.

F. Project Budget

1. Fee
The total fee paid to the Consultant shall be inclusive of all related services and expenditures including reimbursable. A separate outlined Form 4400 shall be prepared in response to a "Request for Specific Services" issued by Metra.

2. Salary Schedule
Selected firms, considered by Metra for a contract award, will be required to submit an "Employee Salary Schedule." The schedule shall outline the Consultant's employees full name and/or job title and an hourly rate of compensation, also, anticipated overhead rate and profit. The Employee Salary Schedule shall become the basis for all of the Consultant's fee proposals in response to a "Request for Specific Services" issued by Metra.

K91049

FOR PROFESSIONAL AND CONSULTING SERVICES AGREEMENT
BLANKET CONTRACTS

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
D/B/A METRA
547 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60661

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AGREEMENT

FOR PROFESSIONAL AND CONSULTING SERVICES
BLANKET CONTRACTS

This Agreement is entered into this 25TH day of SEPTEMBER, 2009 in Chicago, Illinois, by and between the Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra, Metopolitan Rail ("**Metra**"), a public corporation under Illinois law, and V3 Companies of Illinois, Ltd. ("**Consultant**"), having offices located at 7325 Janes Avenue, Woodridge, IL 60517. Consultant and Metra are sometimes collectively referred to as "**Parties.**" In consideration of the promises and agreements set forth, the Parties agree:

1. SCOPE AND DESCRIPTION OF SERVICES.

Consultant will perform the following services ("**Work**"): Provide Blanket Professional Construction Management Services for Union Pacific North Line Bridges.

2. COMPENSATION.

The total amount of this blanket Agreement including all individual tasks, shall not exceed $8,400,000.00.

Once specific tasks have been assigned, Metra agrees to pay, and Consultant agrees to accept the prices stipulated on the cost or price schedule, which is attached as Exhibit 2. With respect to the overhead rate described on the attached schedule, Consultant will list the immediate prior year overhead rate. The immediate prior year rate will be a provisional rate until audited by and/or accepted by Metra. Consultant may apply the provisional rate until such time as Metra's Audit Department audits and/or accepts Consultant's actual individual yearly overhead rate as computed under the Illinois Department of Transportation guidelines for computation of overhead rates. Once Metra audits and /or accepts the provisional overhead rate, the actual overhead rate for each year will be applied to each year's respective billings. Payments made using the provisional overhead rate will be subject to change and adjusted to conform with the audited and/or accepted overhead rate for each year. Consultant shall be paid only for the actual Work performed at the prescribed rates during the preceding billing period, not to exceed the percentage of the Work completed as of the end of the billing period. The full payment for each task shall not exceed the total price as stated in the applicable Metra Form 4400 for that particular task(s) assigned ("**Total Price**"). The Metra Form 4400, agreed to by Metra and submitted by Consultant in response to Metra's request for a specific task, and the subsequent Notice to Proceed (defined below), are incorporated into this Agreement by reference. The Total Price also includes the cost of all applicable taxes (where Metra is not exempt), bonds, if required, and other charges of every kind and nature. The Total Price shall not include, and Metra shall not pay, taxes or fees from which Metra is exempt. Metra is exempt from various federal taxes, all state and unit of local government taxes, and registration and license fees. Consultant shall promptly notify Metra, and afford it the opportunity, before payment of any taxes, to contest said claims in the manner and to the extent it may elect, and to settle or satisfy such claims.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES RECITED BELOW:

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION D/B/A METRA

RG
BY _____

PHILIP A. PAGANO
PRINT NAME

TITLE EXECUTIVE DIRECTOR

ATTEST

BY _____
DATE 9/25/09

TITLE ASSISTANT SECRETARY TO THE BOARD

CONSULTANT

BY _____

LOUIS J. GALLUCCI
PRINT NAME

TITLE VICE PRESIDENT

ATTEST

BY _____ 9/1/09
DATE

TITLE President

September 11, 2009

Memorandum

To: File

From: E.H. Remus
Sr. Contracting Agent
Professional Services & Contracts

Subject: Contract No. K91049
Construction Management Services for U.P. North Line Bridges
V3 Companies of Illinois, Ltd.
Not-to-Exceed $8,400,000.00

Cost Review

The attached Wage and Overhead Rates submitted for the subject contract have been reviewed and most appear to be acceptable. The hourly Wage Rates for the Prime and some Subconsultants are within the range of those from other Metra consultants performing similar tasks.

Cotter Consulting, Inc. has a 2010 rate that exceeds the $70.00/hour maximum and Geoservices, Inc. has five (5) rates which are not allowable under this contract.

The chart below lists the Prime and Subconsultant Overhead Rates, which are provisionally approved by IDOT or WDOT per copies of the attached letters:

Company Name	Overhead Rate	Date of IDOT or *WDOT Letter
V3 Companies of Illinois, Ltd.	163.0%	January 23, 2009
Alfred Benesch & Co.	157.26%	September 18, 2008
Cotter Consulting, Inc.	127.48%	May 7, 2009
GeoServices, Inc.	199.83%	May 22, 2009
Hanno Webber & Associates	149.60%	*WDOT - May 21, 2007

Attachments

EHR/jrz

cc: C. Gamboa, Professional Services/Contracts
J. L. Lorenzini, Engineering
E. Fernandes, Audit
Vendor File

Metra is the registered service mark for the Northeast Illinois Regional Commuter Railroad Corporation.

September 2, 2009

Mr. Edward Remus
Metra
547 West Jackson Boulevard , 5th Floor
Chicago, Illinois 60661

Re: Metra Contract No. K91049
Blanket Construction Management Services – Union Pacific Railroad North Line Bridges

Dear Mr. Remus:

Enclosed are the two signed Contracts for Metra Contract No. K91049. Also enclosed are employee compensation schedules and IDOT overhead letters from V3 and its subconsultants.

Please call me at 630-724-9200 or email me at lgallucci@v3co.com if you have any questions or would like additional information.

Sincerely,
V3 COMPANIES OF ILLINOIS LTD.

Louis J. Gallucci
Principal/Director of Public Sector Services

LJG/kjf

Cc: S. Llano

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

January 23, 2009

Subject: PRELIMINARY ENGINEERING
Consultant Unit
Prequalification File

Mr. David Heslinga
V3 Companies Of Illinois, Ltd.
7325 Janes Ave.
Woodridge, IL 60517-

Dear Mr. Heslinga:

We have completed our review of the corporate and financial information portion of your "Statement of Experience and Financial Condition" (SEFC) which you submitted for the fiscal year ending December 31, 2007. Your firm's total annual transportation fee capacity will be $59,600,000.

Your firm's payroll burden and fringe expense rate and general and administrative expense rate totaling 163% are approved on a provisional basis and will be used in evaluating your Statement(s) of Interest in our selection process. The actual rate used in agreement negotiations may be determined by our Bureau of Budget and Fiscal Management in a pre-award audit.

Your firm is required to report to this office any additions or deletions of your licensed professional staff or any other key personnel that would affect your firm's prequalification in a particular category. This report must be submitted within 15 calendar days of the change.

Your firm is prequalified until December 31, 2008. You will be given an additional six months from this date to submit the entire "Statement of Experience and Financial Condition" (SEFC) to remain prequalified.

Very truly yours,

Cheryl Cathey

Cheryl Cathey P.E.
Chief of Preliminary Engineering

V3 COMPANIES OF ILLINOIS EMPLOYEE COMPENSATION			
COMPANY			HOURLY
NAME	EMPLOYEE NAME	Classification	RATE
V3	Larry Mitchell	Senior Technician	$29.50
V3	Cheryl A. Ludwig	Construction Administrator	$26.00
V3	Chris Bartosz	Survey Project Manager	$51.93
V3	Sean G Ludwig	Technician I / II	$26.00
V3	Edward R. Benesh Jr.	Engineer I / II	$27.00
V3	Borut Vujic	Engineer I / II	$28.40
V3	Eric M Borgman	Project Manager Constr Public	$41.50
V3	Matthew E Powers	Resident Engineer	$43.30
V3	Tom R Valaitis	Division Director	$70.00
V3	Louis J. Gallucci	Principal	$70.00

Illinois Department of Transportation
Office of Finance and Administration
2300 South Dirksen Parkway / Springfield, Illinois / 62764

September 18, 2008

"Revised"

Ms. Angela M. Miceli
Alfred Benesch & & Company
205 N. Michigan Ave., Suite 2400
Chicago, IL 60601

Dear Ms. Miceli:

We have reviewed the data submitted by your firm and have drawn the following conclusions:

1. There were no adjustments made on the submitted data.

2. The combined overhead rate is 153.14% for fiscal year ending May 25, 2008 and for projects in FY 2008. The combined overhead rate is 157.26% going forward on new contracts and amendments issued in FY 2009.

These rates may be used by your firm for billing purposes through November 30, 2009. These rates are provisional and may be subject to audit.

Sincerely,

Gene Gansz
Audit Supervisor

GG:JU:pk

cc:
Bureau of Design & Environment, Consultant Unit
407-24 File
SEFC Database

benesch

Proposed Staff for
Metra Construction Engineering Services
2009 Hourly Rates

Name	Classification	Current Hourly Compensation
Naji Ahmed	Construction Representative	$30.00
Larry R. Bellisario	Project Manager	$53.60
Timothy A. Carter	Construction Representative	$33.00
Andrew J. Keaschall	Project Engineer	$34.60
Ateeq U. Mohammed	Construction Representative	$33.50
Brian O. Monk	Construction Representative	$26.30
Michael J. O'Connor	Project Manager	$57.20
Scott C. Wojteczko	Designer	$29.30

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

May 22, 2009

Subject: PRELIMINARY ENGINEERING
Consultant Unit
Prequalification File

Mr. Julian Rueda
Geo Services, Inc.
805 Amherst Court
Suite 204
Naperville, IL 60565-3448

Dear Mr. Rueda:

We have completed our review of the corporate and financial information portion of your "Statement of Experience and Financial Condition" (SEFC) which you submitted for the fiscal year ending December 31, 2008. Your firm's total annual transportation fee capacity will be $6,400,000.

Your firm's payroll burden and fringe expense rate and general and administrative expense rate totaling 199.83% are approved on a provisional basis and will be used in evaluating your Statement(s) of Interest in our selection process. The actual rate used in agreement negotiations may be determined by our Bureau of Budget and Fiscal Management in a pre-award audit.

Your firm is required to report to this office any additions or deletions of your licensed professional staff or any other key personnel that would affect your firm's prequalification in a particular category. This report must be submitted within 15 calendar days of the change.

Your firm is prequalified until December 31, 2009. You will be given an additional six months from this date to submit the Corporate and Financial Information portion of the "Statement of Experience and Financial Condition" (SEFC) to remain prequalified.

Very truly yours,

Cheryl Cathey

Cheryl Cathey P.E.
Chief of Preliminary Engineering

Geo Services, Inc.
Geotechnical, Environmental and Civil Engineering
An MBE - DBE Firm

UNLOADED HOURLY LABOR RATES

Effective 01 Sep 09
METRA

Name	Classification	Current Hourly Compensation	
		Amount	Prevailing Wage
Rueda, Julian	Principal Engineer	$ 80.00	
O'Brien, Dixon	Principal Geotechnical Engineer	$ 78.00	
Swartzendruber, Willard	Senior Geotechnical Engineer	$ 78.00	
Szwaya, Dan	Senior Geotechnical Engineer	$ 78.00	
Zimmerman, Eric	Senior Geotechnical Engineer	$ 78.00	
Ptak, Andrew J.	Project Manager	$ 56.00	
Devia, Antonio	Senior Project Engineer	$ 34.75	
Catalano, Wes	Engineering Geologist	$ 39.50	
Barland, Alex	Project/Field Engineer	$ 30.00	
Hovakimian, Vahan	Project/Resident Engineer	$ 32.50	
Isada, Manuel	Project/Resident Engineer	$ 26.25	
Tailor, Bhavika	Adminstrative Assistant	$ 23.25	
Tailor, Monika	Adminstrative Assistant	$ 23.25	
Realeza, Richard	Field Engineer/Technician - Intern	$ 17.00	
Galvan, Tim	Field Engineer/Technician - Intern	$ 16.50	
Singla, Rajan	Engineering Technican (Level E)	$ 33.60	$ 34.48
Sura, Satish	Engineering Technican (Level E)	$ 33.60	$ 34.48
Tailor, Arun N.	Engineering Technican (Level E)	$ 33.60	$ 34.48
Tailor, Jignesh	Engineering Technican (Level E)	$ 33.60	$ 34.48
Badsing, Bart M.	Engineering Technican (Level D)	$ 31.14	$ 34.48
Bhatt, Hardik	Engineering Technican (Level D)	$ 31.14	$ 34.48
Hinshaw, Greg	Engineering Technican (Level D)	$ 31.14	$ 34.48
Omeri, Skender	Engineering Technican (Level D)	$ 31.14	$ 34.48
Patel, Himanshu	Engineering Technican (Level D)	$ 31.14	$ 34.48
Patel, Riyaz	Engineering Technican (Level D)	$ 31.14	$ 34.48
Patel Sarfaraz	Engineering Technican (Level D)	$ 31.14	$ 34.48
Patel, Amitkumar	Engineering Technican (Level C)	$ 28.44	$ 34.48
Jauridez, Enrique	Engineering Technican (Driller)	$ 36.41	$ 47.61
Din, Mohammed	Engineering Technican (Driller)	$ 36.41	$ 47.61
Huffman, Richard	Engineering Technican (Driller)	$ 36.41	$ 47.61
Roesel, Denis	Engineering Technican (Driller)	$ 36.41	$ 47.61
Thomasson, Barry	Engineering Technican (Driller)	$ 36.41	$ 47.61
Caffey, Raphael	Engineering Technican (Helper)	$ 30.56	$ 43.03
Roberson, Michael	Engineering Technican (Helper)	$ 30.56	$ 43.03
Thomasson, Robert	Engineering Technican (Helper)	$ 30.56	$ 43.03
Walter, Norm	Engineering Technican (Helper)	$ 30.56	$ 43.03

Salaries are subject to change without notice. Raises are given on July 1st every year. Union contract requires raises effective March 1st every year. Payroll rates do not include Prevailing Wages. Prevailing Wages would be assessed on a case-by-case for compliance under Illinois Prevailing Wage Act and the Illinois Department of Labor.

805 Amherst Court, Suite 204 ♦ Naperville, IL 60565-3448 ♦ Phone (630) 305-9186 ♦ Fax (630) 355-2838
www.geoservicesinc.net

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

May 7, 2009

Subject: PRELIMINARY ENGINEERING
Consultant Unit
Prequalification File

Ms. Anne Edwards-Cotter
Cotter Consulting, Inc.
8150 S. Cass Ave.
Darien, IL 60561-

Dear Ms. Edwards-Cotter:

We have completed our review of the corporate and financial information portion of your "Statement of Experience and Financial Condition" (SEFC) which you submitted for the fiscal year ending December 31, 2008. Your firm's total annual transportation fee capacity will be $8,800,000.

Your firm's payroll burden and fringe expense rate and general and administrative expense rate totaling 127.48% are approved on a provisional basis and will be used in evaluating your Statement(s) of Interest in our selection process. The actual rate used in agreement negotiations may be determined by our Bureau of Budget and Fiscal Management in a pre-award audit.

Your firm is required to report to this office any additions or deletions of your licensed professional staff or any other key personnel that would affect your firm's prequalification in a particular category. This report must be submitted within 15 calendar days of the change.

Your firm is prequalified until December 31, 2009. You will be given an additional six months from this date to submit the entire "Statement of Experience and Financial Condition" (SEFC) to remain prequalified.

Very truly yours,

Cheryl Cathey

Cheryl Cathey P.E
Chief of Preliminary Engineering

COTTER CONSULTING, INC.
2009-2010 Personnel Wage Rates

Full Name	Title	2009 Hourly Rate	2010 Hourly Rate*
Andrew Miller, PE	Project Manager	$52 00	$54 08
George E. Panages, PE	Project Manager	$70 00	$72 80
Audie Garcia	Assistant ResidentEngineer	$39 00	$40 56
James J Ryan	Assistant ResidentEngineer	$39 90	$41 50
Michael O Huggins	Assistant ResidentEngineer	$40 10	$41 70
Veerachai MarkChanwongse, PE	Assistant ResidentEngineer	$39 85	$41 44
Syed Ziauddin	Assistant ResidentEngineer	$38 00	$39 52
Martin J Hoffman	Assistant ResidentEngineer	$40 10	$41 70
Ronald J Hampton	Assistant ResidentEngineer	$39 10	$40 66
Benjamin O'Connor	Field Engineer I	$27 50	$28 60
Brett Roberts	Field Engineer I	$28 30	$29 43
Jason Heinekamp	Field Engineer I	$25 00	$26 00
James Donald Luebke	Field Engineer I	$25 00	$26 00
Matt Phillip Wagle	Field Engineer I	$27 50	$28 60
Obaid Khan	Field Engineer I	$30 00	$31 20
Reynato Tionoson	Field Engineer I	$30 00	$31 20
Nazeer Ahmad	Field Engineer II	$31 50	$32 76
Willie Libunao	Field Engineer II	$36 00	$37 44
Mark A Elferma	Field Inspector	$26 55	$27 61
Raymond Flood	Field Inspector	$31 25	$32 50
Patrick M Alston	Field Inspector	$18 25	$18 98
Cleo Veal	Senior Field Inspector	$28 50	$29 64
Philippe Victor	Senior Field Inspector	$30 00	$31 20
Ryan Christoffel	Senior Field Inspector	$28 50	$29 64
Robert L Pearce	Senior Field Inspector	$32 10	$33 38
Jeffrey W Kiedaisch, PE	Resident Engineer	$43 27	$45 00
Kevin Gentley, PE	Resident Engineer	$40 00	$41 60
Christine Russell	Senior ProjectAdministrator	$28 00	$29 12
Debra Bork	Senior ProjectAdministrator	$27 50	$28 60
Emily Boyle	Project Administrator	$18 00	$18 72
Ruth Logan	Project Administrator	$18 00	$18 72
Jeffrey F Sapinski	Safety Manager	$43 50	$45 24
Kenneth Coke, CSP	Safety Manager	$42 00	$43 68

* Actual 2010 hourly wage rates are estimated Annual salary adjustments are made on January 1 of each year An average of 4% was used for this estimate

May 21, 2007

We have received Hanno Weber & Associates – Architecture/Urban Design Consultant Financial Report for the year-ended December 31, 2006. Based on a cursory review, your Consultant Financial Report has met the requirements of our Facilities Development Manual 8-5-47.

Under WisDOT policy, the rates and information submitted in the Consultant Financial Report are subject to audit. The indirect cost rate of 149.60% (includes a voluntary reduction) proposed in your Consultant Financial Report is the approved maximum rate to be used for estimating and invoicing costs on Department contracts.

Our limited acceptance of your Consultant Financial Report is not based on an audit and does not constitute "establishment of a rate by a cognizant agency" for the purposes of applying the rules published in Title 23, Code of Federal Regulations s.172.7. Audits are performed at the discretion of WisDOT.

If you have any questions, feel free to call me at (608) 266-2259 or contact me via email.

Don Dorn
Audit Supervisor
WisDOT
don.dorn@dot.state.wi.us

COST AND PRICE ANALYSIS - PROFESSIONAL SERVICES CONTRACTS -

For use of this form, see Multi procedure PU-06

This form is to be used as provided under RFA procedures. It will be executed and submitted with proposals in response to "Requests for Proposals," for the procurement of professional services. If your cost accounting system does not permit analysis of costs as required, contact the purchasing office for further instructions

REQUEST NO.

NAME AND ADDRESS OF OFFEROR
HANNO WEBER & ASSOCIATES - ARCHITECTURE / URBAN DESIGN
11 EAST ADAMS STREET, SUITE 702
CHICAGO, ILLINOIS 60603

TITLE OF PROJECT

DETAIL DESCRIPTION		ESTIMATED HOURS	RATE/HOUR*	TOTAL ESTIMATED COST (Dollars)
1. DIRECT LABOR (specify)				
PRINCIPAL, Hanno Weber			$60.00	
ASSOCIATE PRINCIPAL & PROJECT MANAGER: Kathleen Hess			$50.00	
PROJECT ARCHITECT: Kevin Vongsvdam			$40.00	
PROJECT TECHNICAL STAFF: Adam Smith			$30.00	
* Rate/hour is estimated for the duration of the contract. Billing will be based on actual rates				
TOTAL DIRECT LABOR				$0.00
2. BURDEN (Overhead-specify) DEPARTMENT OR COST CENTER	BURDEN RATE	X BASE	BURDEN	
EMPLOYEE BENEFITS, OFFICE OPERATIONS, SERVICES AND OTHER	1.40%			
TOTAL BURDEN				$0.00
3. DIRECT MATERIAL				
TOTAL MATERIAL				$0.00
4. SPECIAL TESTING (including field work at Government Installations)				
TOTAL SPECIAL TESTING				-
5. SPECIAL EQUIPMENT (If direct charge-specify in exhibit B on reverse)				-
6. TRAVEL (If direct charge)				
TOTAL TRAVEL				$0.00
7. CONSULTANTS (Identify-purpose-rate)				
TOTAL CONSULTANTS				-
8. SUBCONTRACTS (Specify in Exhibit A on reverse)				$0.00
9. OTHER DIRECT COSTS (Specify in Exhibit B on reverse - explain royalty costs, if any				$0.00
10. TOTAL DIRECT BURDEN				-
11. GENERAL AND ADMINISTRATIVE EXPENSE (Rate % of item nos.)				$0.00
12. TOTAL ESTIMATED COST				$0.00
13. FIXED FEE OR PROFIT (State Basis for amount in proposal) 10% (x Base + Burden)				$0.00
14. TOTAL ESTIMATED COST AND FIXED FEE OR PROFIT				$0.00

OVERHEAD RATE AND GENERAL AND ADMINISTRATIVE INFORMATION

A. GOVERNMENT AUDIT PERFORMED	DATE OF AUDIT	ACCOUTING PERIOD COVERED
N.A.	N.A.	2008

B. NAME AND ADDRESS OF GOVERNMENT AGENCY MAKING AUDIT	C. DO YOUR CONTRACTS PROVIDE NEGOTIATED OVERHEAD RATES NO YES
N A	N A

D. (If no Government rates have been established furnish the following information)

DEPARTMENT OR COST CENTER	RATE	BASE	TOTAL INDIR. EXP. POOL	BASE FOR TOTAL
PRINCIPAL	1.400	$60.00	$84.00	$144.00
PROJECT MANAGER	1.400	$50.00	$70.00	$120.00
PROJECT ARCHITECT	1.400	$40.00	$56.00	$96.00
PROJECT TECHNICAL STAFF	1.400	$30.00	$42.00	$72.00

16. EXHIBIT A - SUBCONTRACT INFORMATION (If more space needed, use blank sheets, identifying item number)

NAME AND ADDRESS OF SUBCONTRACTOR (S)	SUBCONTRACTED WORK	SUBCONTRACT TYPE	SUBCONTRACT AMOUNT
N.A.			

17. EXHIBIT B - OTHER DIRECT COSTS (specify, if more space needed, use blank sheets, identifying item number)

N.A.

CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that he has, has not employed or retained any company or person (other than full-time bona fide employee working solely for the bidder) to solicit or secure his contract, and (b) that he has has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commissions, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

NUMBER OF CONTRACTOR EMPLOYEES	STATE INCORPORATED IN
5	N.A.

DATE	REPRESENTATIVE OF CONTRACTOR
08/20/09	PRINCIPAL & SOLE PROPRIETOR

received by the Professional Services/ Contracts Division and first opened, in the presence of a witness, on the respective proposal due date. The Professional Services/ Contracts Division will perform an initial review and complete a Responsibility Determination Form with respect to each proposal. Any potential Offeror which does not demonstrate that they are a responsive Offeror necessary to assure achievement of the RFP objectives may be eliminated from further consideration. Proposals accepted by the Professional Services/ Contracts Division for consideration will be forwarded to the Evaluation Committee for review.

Each proposal accepted for consideration will be evaluated by the Evaluation Committee, first individually by each member then collectively as a group, based on the Evaluation Criteria provided in the subject RFP. The Evaluation Committee shall make a preliminary evaluation of the submitted proposals to identify, normally, no less than the three highest ranked Offerors based on the subject Evaluation Criteria with which the Professional Services/ Contracts Division shall arrange to engage in further discussions.

The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, shall coordinate further discussions with the identified highest ranking Offerors, including the scheduling of a pre-award interview to clarify any final matters. The Professional Services/ Contracts Division shall also obtain such other information, other than cost information, necessary to evaluate the identified highest ranking Offerors and their respective proposals.

Upon obtaining the foregoing information, the Evaluation Committee shall re-evaluate the identified highest ranking Offerors, first individually by each member then collectively as a group, to determine the Offeror whose proposal will be most advantageous to Metra based on the Evaluation Criteria. The Professional Services/ Contracts Division shall continue to negotiate with such selected Offeror to determine the compensation that is fair and reasonable, taking into account the scope, complexity, and professional nature of the services. Except in the case of Blanket RFPs, cost details from such highest ranking Offeror will be obtained on a RC4400 form after the evaluation process. For Blanket RFPs, a schedule of positions with the range of hourly rates including overhead and burden and any other costs to be determined will be obtained on RC4400 form from the highest ranking Offeror after the evaluation process. The Professional Services/ Contracts Division shall complete the Price Analysis Documentation and forward such documentation, together with all other information received with respect to the subject Offeror to the Evaluation Committee. Metra will also perform a Cost Analysis of such Offeror's proposal before entering into a contract in order to measure the cost reasonableness of the subject proposal.

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

Contracts with respect to a given RFP will be generally awarded on a maximum compensation basis, and will reflect a specified maximum amount, payment schedule, and method of payment. Advance payments prior to the incurrence of costs by the Offeror are prohibited. If no contract can be concluded with the highest ranking Offeror, negotiations will be formally terminated with that Offeror and new negotiations will be undertaken with the second highest ranking Offeror (and so on). Upon completion of the foregoing negotiations, the Professional Services/ Contracts Division shall prepare, and have internally approved, a contract to be executed by the selected Offeror. No contract shall exceed five (5) years including options, if any.

The Professional Services/ Contracts Division will maintain all substantive records and correspondence with respect to each RFP. Such records include, but are not limited to, the documentation relating to the rationale for the method of procurement, the selection of contract type, the basis of Offeror selection/ rejection based on the Evaluation Criteria, Evaluation Committee rankings (individual and group) with respect to each Offeror (explaining any wide variances in scores) and the basis for the contract price. All such information shall be maintained by the Professional Services/ Contracts Division in the respective procurement file (other than large maps, drawing and plans which are to be kept in respective department file).

Once a contract has been executed, the Requisitioner/User and the Professional Services/ Contracts Division will continuously monitor Consultant's compliance with the provisions of the contract. In the event of non-compliance by a Consultant, the Professional Services/ Contracts Division will contact said Consultant and attempt to achieve rectification of the compliance deficiencies. If said Consultant is unresponsive, or such deficiencies are not remedied, the Professional Services/ Contracts Division will take remedial actions with respect to the subject contract, including without limitation termination of the contract, as necessary. The Professional Services/ Contracts Division, in consultation with the Requisitioner/User department, will follow FTA guidelines where appropriate and Metra Administrative Operating Procedures regarding the appropriate actions associated with protest and disputes. (See PU-11-RC).

Upon completion of a project, the Requisitioner/User shall complete a Contract Completion Form and forward the completed form to the Professional Services/ Contracts Division to be filed in the respective procurement file.

III. DEFINITIONS

Architectural & Engineering (A & E) Services: See Glossary.

Blue Folder: See Glossary.

AGREEMENT

FOR PROFESSIONAL AND CONSULTING SERVICES

This Agreement is entered into this 22 day of September, 2009in Chicago, Illinois, by and between the Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra, Metropolitan Rail ("**Metra**"), a public corporation under Illinois law, and GFI Genfare ("**Consultant**"), having offices located at 751 Pratt Boulevard, Elk Grove Village, IL 60007. Consultant and Metra are sometimes collectively referred to as "**Parties.**" In consideration of the promises and agreements set forth, the Parties agree:

1. **SCOPE AND DESCRIPTION OF SERVICES.**

Consultant will perform the following services ("**Work**"): Provide Design, Installation and Purchasing of Credit and Debit Card Ticketing Vending Machines.

2. **COMPENSATION.**

Metra agrees to pay, and Consultant agrees to accept as full payment for the Work, the prices stipulated on Metra's Form 4400 (or any other cost or price schedule) which is either attached as Exhibit 2 of this Agreement, or incorporated by reference, as directed by Metra. With respect to the overhead rate described on a Form 4400, Consultant will list the immediate prior year overhead rate. The immediate prior year rate will be a provisional rate until audited by and/or accepted by Metra. Consultant may apply the provisional rate until such time as Metra's Audit Department audits and/or accepts Consultant's actual individual yearly overhead rate as computed under the Illinois Department of Transportation guidelines for computation of overhead rates. Once Metra audits and/or accepts the provisional overhead rate, the actual overhead rate for each year will be applied to each year's respective billings. Payments made using the provisional overhead rate will be subject to change and adjusted to conform with the audited and/or accepted overhead rate for each year. Consultant shall be paid only for the actual Work performed at the prescribed rates during the preceding billing period, not to exceed the percentage of the Work completed as of the end of the billing period. The full payment for the Work shall not exceed $1,299,740.00 ("**Total Price**"). The Total Price also includes the cost of all applicable taxes (where Metra is not exempt), bonds, if required, and other charges of every kind and nature. The Total Price shall not include, and Metra shall not pay, taxes or fees from which Metra is exempt. Metra is exempt from various federal taxes, all state and unit of local government taxes, and registration and license fees. Consultant shall promptly notify Metra, and afford it the opportunity before payment of any taxes, to contest said claims in the manner and to the extent it may elect, and to settle or satisfy such claims. Consultant shall submit all invoices on Metra Form #B100R107, which is incorporated into and made a part of this Agreement, along with all appropriate support documents, for all amounts to be paid by Metra under this Agreement. Invoices must be addressed to the "Accounts Payable Section" for payment and must show Metra Contract No. K90657 and Account No. DS3549-54220004 Metra will pay

Each proposal accepted for consideration will be evaluated by the Evaluation Committee, first individually by each member then collectively as a group, based on the Evaluation Criteria provided in the subject RFP. The Evaluation Committee shall make a preliminary evaluation of the submitted proposals to identify, normally, no less than the three highest ranked Offerors based on the subject Evaluation Criteria with which the Professional Services/ Contracts Division shall arrange to engage in further discussions.

The Professional Services/ Contracts Division, with the assistance of the Requisitioner/User, shall coordinate further discussions with the identified highest ranking Offerors, including the scheduling of a pre-award interview to clarify any final matters. Cost details from such highest ranking Offerors may be obtained on a RC4400 and/or other approved cost sheet. The Professional Services/ Contracts Division shall also obtain such other information from the highest ranking Offerors as necessary to enable an understanding of the basis of the final cost and/or as otherwise requested by the Evaluation Committee. The profit will be negotiated separately from the cost. The Professional Services/ Contracts Division shall complete the Price Analysis Documentation and forward such documentation, together with all other information received with respect to the subject Offerors to the Evaluation Committee.

Upon obtaining the foregoing information, the Evaluation Committee shall re-evaluate the identified highest ranking Offerors, first individually by each member then collectively as a group, to determine the Offeror whose proposal will be most advantageous to Metra based on the Evaluation Criteria. The Professional Services/ Contracts Division shall continue to negotiate with such selected Offeror to determine the compensation that is fair and reasonable, taking into account the scope, complexity, and professional nature of the services. The Professional Services/ Contracts Division will also perform a Cost Analysis of such Offeror's proposal before entering into a Professional Service Contract in order to measure the cost reasonableness of the subject proposal.

Contracts with respect to a given RFP will be generally awarded on a maximum compensation basis, and will reflect a specified maximum amount, payment schedule, and method of payment. Advance payments prior to the incurrence of costs by the Offeror are prohibited. If no contract can be concluded with the highest ranking Offeror, negotiations will be formally terminated with that Offeror and new negotiations will be undertaken with the second highest ranking Offeror (and so on). Upon completion of the foregoing negotiations, the Professional Services/ Contracts Division shall prepare, and have internally approved, a Professional Service Contract to be executed by the selected Offeror. No Professional Service Contract shall exceed five (5) years including options, if any. No portion of the work to be performed by Consultant pursuant to a Professional Service Contract may be assigned to a subcontractor unless explicitly approved in advance by the Requisitioner/User. When a subcontractor is permitted to be utilized by the selected

be paid only for the actual work completed at the prescribed rates, not to exceed the percentage of work completed as of the end of the billing period.

In addition, Dr. Harris had provided an Appendix H, "Contract/Purchase Order File Index," which Metra has revised and re-titled, "Checklist – IFB's and Checklist - RFP's" (see attached). They are incorporated into the procurement procedures (see attached proposed revised Procedure PU-08-RC), and staff has begun to utilize them in order to standardize contract organization.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

Serial Price Negotiations (Element #52):
The PSR noted that this file contained no documentation showing how the blanket value was arrived at or that price negotiations took place. Metra's initial response stated that it had not conducted any price negotiations for this contract. That was not accurate and we apologize. Upon further research and consultation with the appropriate personnel, Metra respectfully requests permission to amend that answer.

With respect to the issue of how we determined the blanket value of the Contract, we refer you to Metra's response to Element #7 above. The basis for contract price is explained in the attached Memo from Metra's Chief Engineering Officer, Joe Lorenzini, dated May 31, 2011. LTK received a contract for design engineering for portions of the Positive Train Control ("PTC") project. We have attached the estimated cost for the entire PTC project, in the amount of $50,466,437, that was prepared prior to the solicitation by Metra's technical experts. The estimate for the design engineering portion of the project is $6,816,600. The main funding for the PTC project is coming from the State Bond program, which is not expected to be received until 2012. In order to meet Congress' mandated installation date for PTC of 2015, we could not wait until Metra received the 2012 funding and we needed to start the design work sooner. Therefore, in order to stay on schedule and start the design engineering for the PTC project, we elected to award a $750,000 start-up contract for a portion of the larger budgeted cost. This

smaller amount was all that was needed to start the design engineering and keep us on schedule until the 2012 funding arrives. We have also attached a memo to file from the Department Head, Materials Management showing the estimated cost for the task order ($750,409.31).

With respect to price negotiations, we explained in Metra's response to Element #37 that Metra's procedures require offer negotiations with the highest ranked proposer (see attached PU-08-RC), and there **were** rate negotiations **before** the award date (November 11, 2009) of the contract. In fact, LTK submitted hourly rates for its employees (see attached LTK 2009 Hourly Rate Schedule), but the rates for two employees were rejected as too high (see attached memo from Metra dated September 30, 2009). Thereafter, the firm reduced those rates so those individuals could work on the project (see attached invoice showing the lower, negotiated rates for those individuals). Although the memo does not specifically use the term "negotiate," this process required negotiation before a recommendation for award could be made. (See attached letter to LTK and pages from the contract showing the execution date of 11/11/2009.) Metra will document all future negotiations for A & E type blanket contracts. We also seek clarification from the FTA with respect to exactly what price negotiations must take place for blanket agreements before the contract award, and we will incorporate those changes into the procedures.

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

Clauses (Element# 56):

We understand that the small purchases lack the applicable federal clauses and that issue has been addressed. We have reviewed LTK's contract and believe that all the applicable federal clauses were included in the contract. If this is not the case, we would appreciate additional guidance with respect to those additional clauses that Metra should have included in the contract. However, to insure that the required federal clauses are included in future contracts, Metra will insert as an additional exhibit to all procurements, a comprehensive list of the required federal clauses and copies of those clauses from FTA Circular 4220.1F (see attached Contract Clauses Exhibit). In addition, Metra's

From July 21, 2011, PSR Final Report

52. Serial Price Negotiations [A&E]

Basic Requirement: Chapter VI, Section 3.f. (3) (d) of FTA C 4220.1F indicates that under the Brooks Act:

- Negotiations be conducted with only the most qualified offeror
- Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

Discussion: Two (2) A&E procurements were reviewed for this requirement and one (1) was found to be deficient due to a lack of documentation on negotiations conducted. There was no documentation on how the final blanket purchase order value was arrived at or any evidence of negotiations.

Best Practices: The use of serial negotiations to determine the contract price after the preferred technical choices have been made addresses the cost issue as secondary to the quality issues. The grantee must be careful to specify a realistic level of qualifications required to perform the work and then evaluate against those needs to avoid technical selection of overqualified firms whose pricing may be difficult to adjust to the grantee's budget. Both procurement and technical staff must be knowledgeable in A&E procurement requirements.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: Two (2) A & E procurements were reviewed for this requirement and one (1) was found deficient due to lack of documentation on negotiations conducted. There was no documentation on how the final blanket purchase order value was arrived at or any evidence of negotiations.

This contract was one of 8 awards issued from Request for Proposal No. 87659, and the original scoring documentation is located in the first contract, K30869, and is referred to in the contract file that the review found deficient. However, the value of the contract is noted on the Request for Proposal as a "not to exceed" amount, and in this case, that contract had a set value of $500,000.00. In addition, Metra did not negotiate the fixed hourly or burden rates prior to contract approval. The actual negotiation occurred at the time a "task" was assigned when estimated hours were included along with the hourly and burden rate.

Metra concurs and effective immediately the process has boon implemented for negotiating to establish the fixed hourly rates and burden rate done prior to any contract approval for all blanket fixed-fee typo A & E contracts.

Reviewing Contractor's Response: Metra's response to this deficiency is not adequate because it did not address how this deficiency will be corrected. All of the contracts issued from RFP No. 87659 should be amended. The history of contract costs and fee must be provided to FTA and evidence of contract changes must be provided to FTA. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

Engineering Department's Process For
Awarding A&E Contracts

(May 31, 2011)

The Engineering Department issues multiple consulting engineering contracts every year. These are professional service contracts and the firms are selected based on the Brooks Method. These contracts fall into two types: (1) single-task A&E projects, and (2) blanket A&E contracts.

1. **Contract Identification Process:** Separate single-task and blanket A&E contracts are issued for various disciplines of the A&E field. Metra generally issues blanket contracts for signal design engineering, mechanical/electrical design engineering, civil/structural design engineering, station and parking lot design engineering, and finally, construction management inspection services. These contracts are put in place to be used as tasks arise during the term of the blanket contract.

   1.1. **Single-Task Contract Identification Process. [Joe L. to review and supplement]** Based on the capital program for the upcoming year, the appropriate in-house technical expert determines the types of contracts required for the work to be performed and the amount of each contract to be awarded. Next, a request for proposal ("**RFP**") is crafted. The RFP contains information on the type of contract to be awarded. The RFP also contains specific information about the project or type of work to be performed under the contract.

   1.2. **Blanket Contract Identification Process.** The first step in awarding blanket contracts is to determine the types and number of contracts needed for the upcoming year. Based on the capital program for the upcoming year, the appropriate in-house technical expert determines the number of contracts, and the types of contracts needed and the amount of each contract to be awarded. Next a request for proposal ("**RFP**") is crafted. The RFP contains information on which type and the number of contracts to be awarded. The RFP also contains specific information about the projects or type of work to be performed under the contracts.

2. **Selection process for Single-Task and Blanket Contracts.**

   2.1. **Evaluation of Proposals and Scoring (same for both single task and blankets).** Once proposals are received, a team of Metra employees review and score each of the proposals. Once the reviewers have completed their independent review, a meeting is held with all of the reviewers and this meeting is conducted by the Materials Management Department. At this meeting, the reviewers discuss each reviewer's score and come to a consensus agreement on a single score for each of the proposals. The next step is to interview the proposers with the highest scores. Generally, at least the three highest proposers are interviewed, and in some cases more than three may be interviewed. Thereafter, the interviews are held and attended by the same evaluation team. Again, each of the evaluators scores the interviews independently, and then a joint

meeting is conducted by the Materials Management Department to come to a consensus score. Metra then enters into price negotiations with the highest rated proposer.

2.2. **Price Negotiations for Single-Task Contracts.** Three main components comprise the price negotiations with the highest ranked proposer. The first component is the overhead rate. Metra requests a provisional overhead rate from the firm, generally based on the Illinois Department of Transportation's ("**IDOT's**") audited rate for the prior year by. The second component is the hourly rates. These rates are reviewed and analyzed as to their reasonableness for each position to be used for the project. The final component is negotiating the number of hours needed to perform the work. These hours are reviewed by the appropriate in-house technical expert as to their reasonableness for the level of effort needed to perform the project. The aforementioned steps are followed before a contract is awarded. Of course, pursuant to the Brooks Method, if Metra does not reach a negotiated agreed upon price with the highest ranked proposer, that proposer is dismissed. Metra then initiates price negotiations with the second ranked proposer.

2.3. **Price Negotiations for Blanket Contracts. Price negotiations** for the award of blanket contracts utilize the same three components listed above for single-task contracts, but the process is slightly different. When the contract is negotiated, the overhead rate and hourly rates are negotiated in the same manner as a single-task contract before the contract is awarded. However, the number of hours are not determined or reviewed until a task order is assigned. This is because a blanket contract is used on an "as-needed" basis, and, therefore, the hours cannot be reviewed until a task is identified and assigned. At that point, the Engineering Department reviews the hours needed to perform an assigned task and negotiates a final number of hours with the A&E firm that has the blanket contract.

SIGNAL PTC SUMMARY SHEET

	DISTRICT	MATERIAL	DESIGN		SHOP WIRING		INSTALLATION		TESTING		VERIFICATION		DISTRICT TOTAL DOLLARS	DISTRICT TOTAL MANHOURS
		DOLLARS	DOLLARS	MAN/HOURS	DOLLARS	HOURS	DOLLARS	MAN/HOURS	DOLLARS	MAN/HOURS	DOLLARS	MAN/HOURS		
1	MED - UNIVERSITY PARK	$ 4,033,445	$ 1,483,200	8,240	$ 1,302,912	18,096	$ 2,108,160	29,280	$293,376	3,058	$800,256	8,336	$ 10,021,349	67,006
2	MED - SOUTH CHICAGO	$ 306,510	$ 214,200	1,190	$ 293,760	4,080	$ 293,760	4,080	$52,224	544	$182,784	1,904	$ 1,343,238	11,798
3	MED - BLUE ISLAND	$ 150,750	$ 81,000	450	$ 155,520	2,160	$ 155,520	2,160	$27,648	288	$96,768	1,008	$ 667,206	6,066
4	RID - ROCK ISLAND	$ 2,020,300	$ 1,688,400	9,380	$ 315,648	4,384	$ 838,080	11,640	$219,648	2,288	$580,608	6,048	$ 5,662,684	33,740
5	RID - BEVERLY	$ 1,267,925	$ 763,200	4,240	$ 417,024	5,792	$ 768,960	10,680	$92,160	960	$107,520	1,120	$ 3,416,789	22,792
6	SOUTHWEST SERVICE	$ 658,430	$ 435,600	2,420	$ 51,840	720	$ 318,080	4,440	$102,912	1,072	$333,312	3,472	$ 1,901,774	12,124
7	MD - WEST	$ 1,286,540	$ 671,400	3,730	$ 342,144	4,752	$ 779,328	10,824	$210,432	2,192	$451,584	4,704	$ 3,741,428	26,202
8	MD - NORTH	$ 2,208,775	$ 1,197,000	6,650	$ 1,096,704	15,232	$ 1,494,720	20,760	$198,144	2,064	$397,824	4,144	$ 6,591,167	48,850
9	MD - FOX LAKE	$ 405,900	$ 282,600	1,570	$ 261,504	3,632	$ 288,760	4,080	$53,760	560	$161,280	1,680	$ 1,458,804	11,522
TOTAL													$ 34,604,439	240,102

METRA FIELD SUPERVISION (8% OF TOTAL)	$ 2,784,355	
CM FIELD SUPPORT (10% OF TOTAL)	$ 3,480,444	
VEHICLE/CONSTRUCTION EQUIP. (2% OF TOTAL)	$ 696,089	
METRA ENGINEERING (5% OF TOTAL)	$ 1,740,222	
CONTINGENCIES (20% TOTAL)	$ 6,960,888	

COLUMN TOTAL DOLLARS	$ 12,338,575	$ 5,816,600		$ 4,237,056		$ 7,051,988		$1,250,904		$3,111,938		$ 50,466,437	
COLUMN TOTAL MAN/HOURS			37,870		58,848		97,944		13,024		32,416		240,102

LTK - 03/17/10

Metra℠

Memorandum

DATE: October 20, 2009

TO: File

FROM: A. B. Darin, Department Head
Materials

SUBJECT: CONTRACT No. K91240 - Task No. 1
SIGNAL ENGINEERING SERVICES

Estimate of Cost:

Assume: Average hourly rate for all engineering disciplines of $60.00 per hour.
Average Overhead Burden Rate of 162.28%.

Direct Labor Costs	4335 hrs. x $60.00/hr.	$ 260,100.00
Overhead Burden	Direct Labor x 162.28%	$ 422,090.28
Fee 10%	(Direct Labor + Overhead Burden) x 10%	$ 68219.03
TOTAL ESTIMATED COST		$750,409.31

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ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

V. INSTRUCTIONS (Continued)

C. Selection of Consultant (cont'd)

Responsibility		Action
Requisitioner/User and Professional Services/Contracts	7.	Evaluate and then list at least the top three Offerors. Send a list of these Offerors and a list of possible meeting dates to Professional Services/Contracts. Prepare and maintain supporting documents regarding the firm selection.
Professional Services/Contracts	8.	If less than three Offerors, conduct a canvass and document findings.
	9.	Notify these Offerors of their inclusion on a short list and arrange the date, time, and place for a separate discussion and notify DBE Administration and Requisitioner/User of date, time, and place of discussion.
Requisitioner/User and Professional Services/ Contract Division	10.	Document the proceedings and details of the discussions.
	11.	Re-evaluate the Offerors who are within the Scoring Range. The evaluation is to include additional information obtained in any discussion. Select the highest-ranked Offeror.
	12.	Request from the highest-ranked Offeror an RC4400 form, hourly burden rates, and any other schedule of rates and/or overhead rates.
Requisitioner/User and Professional Services/ Contracts Division	13.	Negotiate the offer, with the highest –ranked Offeror. In the event that the Metra staff is unable to reach an agreement with the highest-ranking Offeror, terminate negotiations and enter into negotiations with the next highest-ranking Offeror.

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

V. INSTRUCTIONS (Continued)

C. Selection of Consultant (cont'd)

Responsibility		Action
Requisitioner/User and Professional Services/ Contracts Division	14.	If through negotiations, information on the RC4400 or schedule changes, then require the Offeror to submit an updated RC4400 form. Obtain the terms of the negotiated offer in writing from the Offeror. Perform a Cost Analysis and file a summary of the Cost Analysis with other significant documentation.
Professional Services/Contracts	15.	Notify the Offeror firms which were not selected, by letter, that they will not be considered any further unless a candidate is not selected from those Offerors short listed.
Professional Services/Contracts	16.	For each firm selected, prepare a recommendation memo (See Exhibit V in PU-06-RC, Professional Services Contracts) to the Executive Director, containing an executive summary. The memo should include: the description, the purpose of the contract, the number of proposals received, the source of funding related to the contract, the cost of the contract, the detailed basis for selection, and the specific reasons for the recommendation of the highest ranking Offeror to obtain Board concurrence.
Executive Director	17.	Obtain Board concurrence (See Exhibit II).

LTK Engineering Services

METRA - PTC
PTC Implementation Plan

Calendar Year 2009 Hourly Rate Schedule

Employee Name	Classification	2009 Direct Labor Rate
Bisset, Kendrick	Senior Systems Consultant	$64.90
Carson, John	Systems Consultant	$48.58
Chertock, Guy	Vehicle Consultant	$33.66
Diaz, David	Senior Vehicle Consultant	$84.18
Elliott, David	Senior Vehicle Consultant	$75.46
Golucki, Mark	Systems Consultant	$54.24
Jedynak, Zbigniew	CADD Technician	$36.56
Johnson, Michael	Vehicle Consultant	$38.68
McFadden, Daniel	Senior Vehicle Consultant	$60.10
Novak, Paul	Senior Systems Consultant	$63.72
Patel, Dilip	Senior Vehicle Consultant	$67.84
Rhea, William	Senior Vehicle Consultant	$72.12
Schultz, Robert	Senior Systems Consultant	$62.46
Sergot, George	Senior Systems Consultant	$49.40
Travis, Richard	Senior Systems Consultant	$64.74
Weaver, Paul	Senior Systems Consultant	$62.46

LTK Facilities Overhead Rate	160.55%
LTK Fixed Fee	10.00%

- LTK 2009 Hourly Rates listed above are for calendar year 2009 and are subject to escalation at the first pay period of each year following.

- Expenses are billed at cost, supported by receipts, with no additional mark up.

Lisa J. Larry, Inc.

METRA - PTC
PTC Implementation Plan

Calendar Year 2009 Hourly Rate Schedule

Employee Name	Classification	2009 Hourly Rate
Larry, Lisa	Sr. Systems Consultant	$137.50

- Rate is fully burdened, inclusive of direct labor, overhead, and profit.
- Hourly Rates listed above are for calendar year 2009 and are subject to escalation at the first pay period of each year following.
- Expenses are billed at cost, supported by receipts, with no additional mark up.

sa J. Larry, Inc.
Box 8553
.5 Jackpine St.
Tahoe City, CA 96145-8553

Invoice

Date	Invoice #
9/29/2007	203

Bill To
LTK Engineering Services 300 South Wacker Dr., Suite 2840 Chicago, IL 60606 Attn: Paul Novak

P.O. No.	Terms	Project
	Net 30	Dearborn/Congress

Item	Description	Qty	Rate	Amount
Phase 2	Signal Engineering Support Services	34	137.50	4,675.00

Total	$4,675.00
Credits	$0.00
Balance Due	$4,675.00

Metra SM

Memorandum

Date: September 30, 2009

To: File

From: E.H. Remus EHR
Sr. Contracting Agent
Professional Services & Contracts

Subject: Contract No. K91240
Blanket Signal Engineering Services
LTK Engineering Services
Not-to-Exceed $750,000.00

Cost Review

The attached Wage and Overhead Rates submitted for the subject contract have been reviewed and appear to be fair and reasonable. Most of the hourly wage rates for the prime consultant are within the range of those from other Metra consultants performing similar tasks. The two (2) exceptions are the Senior Vehicle Consultants, whose rates of $84.18 and $75.46 exceed the $70.00/hr cap and are not allowed to be used under this contract.

The chart below lists the Prime Consultant Overhead Rate, which was calculated by their independent audit. A copy of that letter is attached.

Their only subconsultant, Lisa Larry, is a sole-owner/proprietorship with no separate breakout for her profit or overhead. Her rate of $137.50 is fully burdened including profit and is substantiated by a copy of her invoice to the CTA dated 9/29/07.

Company Name	Overhead Rate	Date of Independent Audit Letter
LTK Engineering	160.55%	September 30, 2009

Attachments

EHR/jz

cc: C. Gamboa, Professional Services/Contracts
J. L. Lorenzini, Engineering
E. Fernandes, Audit
Vendor File

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CONSULTANT APP_ .ON FOR PAYMENT

INVOICE

LTK ENGINEERING SERVICES	CONTR. NO: K91240	METRA PROJECT: PTCIP	P.R. NO: EN4394
CONSULTANT ADDRESS:		DESCRIPTION:	PTC Implementation Plan and Design Services – Task 1
100 West Butler Avenue, Ambler PA 19002		TYPE OF SERVICES:	Signal Engineering
CONTRACT AMOUNT:	$ 750,000	PROJECT AMOUNT:	$ 750,000
MODIFICATIONS:		ADDITIONAL AMOUNT:	
ORIGINAL AMOUNT:	$ 750,000	ORIGINAL AMOUNT:	$ 750,000
END DATE: 2-28-2013		PROJECT END DATE:	

01/31/10	INVOICE NO: 3978.01-003R2
INVOICE PERIOD:	START: 12/26/2009
	END: 01/29/2010
INVOICE AMOUNT:	$ 173,561.60
ACCOUNT CODES:	EN439457102005

METRA APPROVAL BOX

BATCH #	VO # X07
VENDOR #	OUV 3219 102
1009	AREA/ACCT/REF:
	EN 4394 5710 2005
HNR/REC	P.O. # K91240
TRM/DUE 25	DISC. AMT.
ATT	SP CK G/L ACT Y
MAN GK. #	GK CK #
P.O./REL VER	CLK ACC 7-13-10
SUPRV. APPR.	

APPROVED: ENGINEERING

ON

ACCT.

BY: OK/Signal/IPR/7/22/10

ACCOUNTS PAYABLE
2010 JUN 25 P 2:39

PROJECT APPROVAL BOX

% OF WORK COMPLETED TO DATE:	46.93%
% OF WORK COMPLETED LAST PERIOD:	23.82%

FIRM PROJECT MANAGER:

Paul Novak 6/23/10

APPROVAL/DATE

METRA PROJECT MANAGER:

Ignatius Panepito

APPROVAL/DATE

LTK ENGINEERING SERVICES

Labor Distribution

January, 2010

Employee Name	Employee Classification	Hourly Rate	Total Hours	Total Labor
Project #C3978.01 (Metra- Blanket Design Services)				
Bissett, Kendrick D.G.	Senior Systems Consultant	$66.50	92.0	$6,118.00
Callen, Joshua L	Staff Consultant	$31.52	21.0	$661.92
Carson, John M	Systems Consultant	$49.58	74.0	$3,668.92
Chertock, Guy	Vehicle Consultant	$33.98	78.0	$2,650.44
Diaz, David N	Senior Vehicle Consultant	$70.00	138.0	$9,660.00
Haas, Brett E	Senior Systems Consultant	$66.64	34.0	$2,265.76
Hillis, John E. Jr.	Project Analyst	$49.90	85.5	$4,266.45
Howard, Susan	Systems Consultant	$47.94	4.0	$191.76
Lee, Robert E	Project Analyst	$37.62	5.0	$188.10
McFadden, Daniel J	Senior Vehicle Consultant	$61.40	99.0	$6,078.60
Novak, Paul G	Senior Systems Consultant	$64.21	71.0	$4,558.91
Patel, Dilip M	Senior Vehicle Consultant	$69.05	57.0	$3,935.85
Rhea Jr., William S	Senior Vehicle Consultant	$70.00	30.5	$2,135.00
Schultz, Robert	Senior Systems Consultant	$63.98	149.0	$9,533.02
St. Ange, Laurie	Staff Consultant	$30.28	31.0	$938.68
Walser, Jay S	Senior Systems Consultant	$64.72	31.5	$2,038.68
	Total Facility Office		1,000.5	$58,890.09
	Total Project Office		-	$0.00
	Total All Offices		1,000.5	$58,890.09

ACCOUNTS PAYABLE
2010 JUN 25 P 2: 39

ORIGINAL

Metra SM
547 W. Jackson Blvd. Chicago, Illinois 60661 Telephone: (312) 322-6900 TTY# 1-312-322-6774

November 11, 2009

VIA FED EX OVERNITE

Ms. Catherine M. Schmidt
Contracts Manager
LTK Engineering Services
100 West Butler Avenue
Ambler, PA 19002

Subject: **Metra Contract No. K91240 dated November 11, 2009**
Blanket Signal Engineering Services
$750,000.00

Dear Ms. Schmidt:

Enclosed is the fully executed subject contract for your records.

The insurance certificates previously submitted by your company have been aproved by the Metra Risk Management Department. You are hereby authorized to proceed with the work under this contract. Mr. Bill Kaminski of the Metra Signal Engineering Department will be your contact at (312) 322-6915.

Unless an audit has been conducted by Metra, and/or Metra has approved your firm's burden rate from a certified independent audit, the burden rate, as submitted and for your subcontractor(s), is provisionally accepted. Metra reserves the right to conduct an audit to verify the burden rate and claimed costs applicable to this and any subsequent projects. Per Clause 9B, Audit and Inspection of Records, note that contract costs of labor, materials and overhead are subject to audit and any over billings to Metra of actual costs will be repaid to Metra.

With receipt of enclosed contract, please be advised your firm must be aware of and comply with the Federal Railroad Administration (49 CFR 214), Working on Railroad Bridges, rules H469, H470 and H471. Return the acknowledgement to my office at the above letterhead address. Call my office if you have any additional questions at (312) 322-6664.

Metra is the registered service mark for the Northeast Illinois Regional Commuter Railroad Corporation.

Very truly yours,

CARLOS GAMBOA

Carlos Gamboa, C.P.M.
Department Head
Professional Services/Contracts

EHR/jz
Enclosure

cc: C. Cummins, Gen'l Dev.
J. L. Lorenzini, Engineering
Y. Kostecki, Accts Payable
S. Llano, DBE
C. Kalck, Risk Management
E. Fernandes, Audit

ACKNOWLEDGEMENT OF AWARD LETTER WITH FRA (49 CFR 214) NOTICE

Firm Name: _____

By: (Print): _____

Signature: _____

Date: _____

AGREEMENT

FOR PROFESSIONAL AND CONSULTING SERVICES
BLANKET CONTRACTS

This Agreement is entered into this 11TH day of NOVEMBER, 2009 in Chicago, Illinois, by and between the Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra, Metopolitan Rail ("Metra"), a public corporation under Illinois law, and LTK Engineering Services ("Consultant"), having offices located at 300 S. Wacker Drive, Suite 2840, Chicago, IL 60606. Consultant and Metra are sometimes collectively referred to as "Parties." In consideration of the promises and agreements set forth, the Parties agree:

1. SCOPE AND DESCRIPTION OF SERVICES.

Consultant will perform the following services ("Work"): Provide Blanket Professional Signal Design Engineering Services.

2. COMPENSATION.

The total amount of this blanket Agreement including all individual tasks, shall not exceed $750,000.00.

Once specific tasks have been assigned, Metra agrees to pay, and Consultant agrees to accept the prices stipulated on the cost or price schedule, which is attached as Exhibit 2. With respect to the overhead rate described on the attached schedule, Consultant will list the immediate prior year overhead rate. The immediate prior year rate will be a provisional rate until audited by and/or accepted by Metra. Consultant may apply the provisional rate until such time as Metra's Audit Department audits and/or accepts Consultant's actual individual yearly overhead rate as computed under the Illinois Department of Transportation guidelines for computation of overhead rates. Once Metra audits and /or accepts the provisional overhead rate, the actual overhead rate for each year will be applied to each year's respective billings. Payments made using the provisional overhead rate will be subject to change and adjusted to conform with the audited and/ot accepted overhead rate for each year. Consultant shall be paid only for the actual Work performed at the prescribed rates during the preceding billing period, not to exceed the percentage of the Work completed as of the end of the billing period. The full payment for each task shall not exceed the total price as stated in the applicable Metra Form 4400 for that particular task(s) assigned ("Total Price"). The Metra Form 4400, agreed to by Metra and submitted by Consultant in response to Metra's request for a specific task, and the subsequent Notice to Proceed (defined below), are incorporated into this Agreement by reference. The Total Price also includes the cost of all applicable taxes (where Metra is not exempt), bonds, if required, and other charges of every kind and nature. The Total Price shall not include, and Metra shall not pay, taxes or fees from which Metra is exempt. Metra is exempt from various federal taxes, all state and unit of local government taxes, and registration and license fees. Consultant shall promptly notify Metra, and afford it the opportunity, before payment of any taxes, to contest said claims in the manner and to the extent it may elect, and to settle or satisfy such claims.

Consultant shall submit all invoices on Metra Form #B100R107, which is incorporated into and made a part of this Agreement, along with all appropriate support documents, for all amounts to be paid by Metra

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES RECITED BELOW:

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION D/B/A METRA

RG

BY _____

PHILIP A. PAGAND
PRINT NAME

TITLE EXECUTIVE DIRECTOR

ATTEST

BY _____
DATE 11/11/09

TITLE ASSISTANT SECRETARY TO THE BOARD

CONSULTANT

BY _____

Frederick H. Landell
PRINT NAME

TITLE Vice President - Northeast Region

ATTEST

BY _____
DATE 9/25/09

TITLE Corporate Secretary

attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

Clauses (Element #56):

We understand that the small purchases lack the applicable federal clauses and that issue has been addressed. We have reviewed Nippon Sharyo's contract and believe that all the applicable federal clauses were included in the contract. If this is not the case, we would appreciate additional guidance with respect to those additional clauses that Metra should have included in the contract. However, to insure that the required federal clauses are included in future contracts, Metra will insert as an additional exhibit to all procurements, a comprehensive list of the required federal clauses and copies of those clauses from FTA Circular 4220.1F (see attached Contract Clauses Exhibit). In addition, Metra's procedures have now been amended to require that the Contract Clauses Exhibit is included in all future procurement contracts, including contracts for small purchases and professional services (see attached proposed revised PU-04-RC and PU-08-RC).

The Senior Division Director, General Administration will conduct an Element-by-Element review with all of the appropriate members of the Procurement and Professional Services staff. The training sessions will review each deficiency and the appropriate corrective action(s) to be implemented. The review will include an analysis of the PSR findings, as well as the purpose and execution of the corrective action. The Senior Director will document when they were held, which Elements were discussed, and who attended the training session. This documentation will be held in the PSR final report file. In addition, Metra will pursue available training provided by FTA, NTI, or other existing sources. We will offer to host courses so that we may include as many Metra Procurement staff as possible. To the extent that existing training does not cover certain topics, we will be issuing an RFP for a consultant to develop specialized training.

Lastly, Audit will commence an independent audit within 120 days of the acceptance of final corrective actions by the FTA. The 120 days should provide adequate time for selecting a sample of procurement awards for our audit to confirm that Metra is following procedures and corrective actions consistently and to issue the report as recommended.

From July 21, 2011, PSR Final Report

56. Clauses

Basic Requirement: Chapter IV, Section 2 and Appendix D of FTA C 4220.1F indicates that:

- A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement.
- Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement.

Discussion: Of the fifty-three (53) procurements reviewed for this requirement, twenty-three (23) were found to be deficient. The standard contract clauses used by Metra for purchases under the small purchase threshold and for professional services do not include the clauses required by FTA.

Best Practices: The Best Practices Procurement Manual discusses which Federal clauses are to be flowed down to sub-contractors and third parties. The flow-down requirements are applicable not only to contracts but to purchase orders as well. See Appendix L, Contract Clauses for an example of a contract clause listing. Purchase order forms that include these requirements should be put in place. Including all required clauses in every file would simplify contract preparation for all federally funded items. Current procedures do not list all the specific flow-down requirements and should be updated to do so, whether in an appendix or in the body of the procedure. Grantees should also provide training to all personnel who are involved in the procurement process (including sub-contractors) to ensure they are familiar with the requirements of the FTA Circular and Master Agreement.

Corrective Action: Metra must respond within thirty (30) days from the date of the final report and provide detailed procedures, evidence of adequate training and evidence of independent audits confirming that procedures are being followed consistently.

Metra's Response: The 23 deficient files lacking the appropriate FTA Clauses were identified against Metra's procurements under $10,000.

Metra concurs and will notify all bidders that Federal statutory and regulatory applicable requirements apply for all federally funded purchases. Additionally, required clauses will be maintained in the respective procurement file. This process will be in place within 30 days.

Reviewing Contractor's Response: Metra's response is not adequate because it did not address how the required clauses will be included in contracts for professional services. The corrective action must be revised to include the current and future inclusion of clauses in this type of contract. Copies of revised procedures and processes, evidence of training, and independent audit reports validating the use of compliant procedures must be provided to FTA within 30 days of the date of the final report.

Exhibit _____

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

CONTRACT CLAUSES

If applicable, FTA Circular 4220.1F Contract Clauses will apply to any purchase order/contract resulting from this Invitation for Bid or Request for Proposal. See the attached listing of the Applicability of Third Party Clauses for the respective type of procurement. For your reference, the Contract Clauses in the attached list, have been listed in this Exhibit as they appear in the Circular. For further information, visit the FTA website: http://www.fta.dot.gov.

APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding $2,000)

		TYPE OF PROCUREMENT				
PROVISION	Page No.	Professional Services/A&E	Operations Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties by Use of a Disclaimer	Pg. 22	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	Pg. 7	All	All	All	All	All
Access to Third Party Contract Records	Pg.6	All	All	All	All	All
Changes to Federal Requirements	Pg. 9	All	All	All	All	All
Termination	Pg. 10	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.	>$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	Pg. 8 & Pg. 11	All	All	All>$10,000	All	All
Special DOL EEO clause for construction projects	Pg. 18				>$10,000	
Disadvantaged Business Enterprises (DBEs)	Pg. 9	All	All	All	All	All
Incorporation of FTA Terms	Pg. 5	All	All	All	All	All
Debarment and Suspension	Pg. 7	>$25,000	>$25,000	>$25,000	>$25,000	>$25,000
Buy America	Pg. 14 & Pg. 19			>$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 $150,000 standard.	>$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 $150,000 standard.	>$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 $150,000 standard.
Resolution of Disputes, Breaches, or Other Litigation	Pg. 22	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Lobbying	Pg. 7	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Clean Air	Pg. 13	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Clean Water	Pg. 13	>$100,000	>$100,000	>$100,000	>$100,000	>$100,000
Cargo Preference	Pg. 15			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Pg. 15	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.

APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding $2,000)

		TYPE OF PROCUREMENT				
PROVISION	Page No.	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act	Pg.18				>$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act	Pg. 10 & Pg. 19		>$100,000 (transportation services excepted).	>$100,000	>$100,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2	Pg. 19				All > $2,000 (also ferries).	
Bonding	Pg. 17				$100,000	
Seismic Safety	Pg. 18	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements	Pg. 16		Transit operations.			
[illegible] Service Operations	Pg. 16		All			
School Bus Operations	Pg. 17		All			
Drug Use and Testing	Pg. 16		Transit operations.			
Alcohol Misuse and Testing	Pg. 16		Transit operations.			
Patent Rights	Pg. 20	R & D				
Rights in Data and Copyrights	Pg. 21	R & D				
Energy Conservation	Pg. 6	All	All	All	All	All
Recycled Products	Pg. 14		EPA-selected items $10,000 or more annually.		EPA-selected items $10,000 or more annually.	EPA-selected items $10,000 or more annually.
Conformance with ITS National Architecture	Pg. 15	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	Pg. 12	A&E	All	All	All	All
Notification of Federal Participation for States	Pg. 6	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.

APPLICABILITY

1. LEGAL EFFECT OF THE CIRCULAR. The Federal Transit Administration (FTA) has developed this circular to assist its recipients and their subrecipients in complying with the various Federal laws and regulations that affect their FTA assisted procurements. FTA considers this circular, in its entirety, to be a guidance document. While this guidance itself does not have the force and effect of Federal law or regulation, it does contain information about Federal laws and regulations for which compliance is mandatory when applicable.

   As guidance, this circular attempts to describe how a recipient or subrecipient of FTA assistance can comply with those Federal requirements. In some cases, this guidance describes the single method by which an FTA recipient or subrecipient can comply with a specific Federal legal or regulatory requirement. In other cases, Federal laws, regulations, and this guidance provide more flexibility. As guidance, this circular also expresses FTA's preferences about how the procurements it supports should be undertaken. FTA's Master Agreement reflects FTA and the recipient's agreement that FTA's third party contracting circular will apply to its third party contracts. As a guidance document, this circular does not waive any requirements of Federal statutes or regulations restated herein except as permitted by their terms.

   Because this circular is guidance, FTA is willing to consider methods of compliance with Federal laws and regulations other than those described therein. If a recipient identifies an alternative method for complying with an applicable Federal statute and regulation, it may contact FTA before employing that method to ensure that FTA agrees with the alternative proposed. While FTA's prior concurrence is not required, FTA reserves the right to decline to participate in the costs of third party procurements that fail to comply with Federal laws, regulations, or the terms of the recipient's underlying grant or cooperative agreement.

2. APPLICABILITY OF THE CIRCULAR. Unless FTA determines otherwise in writing, this guidance applies when the recipient uses FTA assistance to support its procurements.

   a. Participants in FTA Assisted Procurements. Whether and how the circular applies to a specific participant in an FTA assisted project depends on its relationship to the particular FTA assisted procurement:

      (1) Recipients of FTA Grants or Cooperative Agreements. The circular applies to each FTA recipient of Federal assistance, including each grantee and recipient of Federal assistance under a cooperative agreement or an "other agreement" (whether an individual entity or member of a consortium, joint venture, team, or partnership) when it uses FTA assistance for third party contracts. The extent to which the provisions of this circular apply to a recipient depends on whether the recipient is a State or other than a State.

(a) States. When procuring property and services under a grant or cooperative agreement, a State may use the same procurement policies and procedures that it uses for acquisitions not financed with Federal assistance. At a minimum, the State must comply with the federally mandated requirements on contract term limitations for revenue vehicle purchases, competition, prohibitions against geographic preferences, procurement of architectural engineering (A&E) services, and awards to responsible contractors. The State must also ensure that each purchase order and contract financed with FTA assistance includes all provisions required by Federal statutes and their implementing regulations.

1 Governmental Subrecipients of the State. Each State and its governmental subrecipients may use State procurement procedures for their third party contracts. Only those provisions of this circular and the sections of the Common Grant Rule for governmental recipients, 49 CFR Part 18, applicable to the State will apply to procurements by the State's governmental subrecipients.

2 Private Non-Profit Subrecipients of the State. In contrast, the provisions of this circular and the Common Grant Rule for non-governmental recipients, 49 CFR Part 19, will apply to a private non-profit subrecipient of a State.

(b) Recipients and Subrecipients that are not States. This circular applies to third party contractors and subcontractors of all other FTA recipients and their subrecipients, including regional public transportation authorities, that are not a State. Even though a recipient or subrecipient is not a State, it may use its own procurement procedures, if those procedures conform to applicable Federal law and regulations, including the applicable Common Grant Rule.

(2) Subrecipients of FTA Assistance. This circular also applies to each subrecipient, including each subgrantee (a type of subrecipient), under an FTA grant or cooperative agreement) that enters into contracts with other parties financed with FTA assistance.

(3) Recipients of Both Federal Assistance Awarded by FTA and Funds Provided by Another Federal Agency. An FTA recipient that also uses funding provided by another Federal agency or agencies for a third party procurement also supported with FTA assistance must comply with the third party contracting requirements of both FTA and each additional Federal agency providing Federal assistance. If compliance with all Federal requirements is impossible, the recipient should notify the FTA Chief Counsel for resolution. If an FTA recipient finances an acquisition with funding provided by another Federal agency but not with FTA assistance, this circular would not apply to that procurement.

(4) Recipients of "Other Agreement" Assistance. For "other agreements" authorized by 49 U.S.C. Section 5312(a) for research, development, demonstration, and deployment projects or by 49 U.S.C. Section 5312(b) for joint partnership projects for the deployment of public transportation innovation, this circular may be used

as an initial starting point from which to consider the Federal requirements and other provisions that should be adopted for the project, and the other standard Federal requirements that should be modified or waived to achieve FTA's and the recipient's objectives.

(5) Third Party Contractors and Subcontractors.

(a) Status. Neither third party contractors nor third party subcontractors are "recipients" or "subrecipients" for purposes of this circular. Consequently, third party contractors are not directly covered by this circular, the Common Grant Rules at 49 CFR Parts 18 and 19, or FTA's "Best Practices Procurement Manual" (BPPM) in awarding their subcontracts.

(b) Effect of Federal Requirements. However, each third party contractor and subcontractor is required to comply with the terms of its third party contract or subcontract, including requirements to extend those federally required clauses and provisions to its subcontractors at the lowest tier required. For that reason, this circular, the Common Grant Rules at 49 CFR Parts 18 and 19, and the BPPM do provide useful information to a third party contractor and third party subcontractor about the constraints under which a recipient may enter into a third party contract financed with FTA assistance.

(6) Environmental and Energy Efficiency Preferences. A preference, to the extent practicable and economically feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient (discussed further in Chapter IV of this circular).

(7) Access to Records. Apart from the more limited record access provisions of the Common Grant Rules, 49 U.S.C. Section 5325(g) provides FTA and DOT officials, the U.S. 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.

b. Special Notification Requirements for States. For many years, various Federal appropriations laws imposed notification requirements on all recipients of Federal assistance awards exceeding $500,000. Currently, notification requirements have been limited to States, but the $500,000 threshold has been removed. Therefore, each State must include provisions in all its requests for proposals, solicitations, Federal assistance applications, forms, notifications, press releases, or other publications involving FTA assistance, stating that FTA is or will be providing Federal assistance for the project, the amount of Federal assistance FTA has provided or expects to provide, and the Catalog of Federal Domestic Assistance (CFDA) Number of the program that authorizes the Federal assistance. FTA interprets the statute to require that subrecipients, lessees, or third party contractors of the State at any tier also comply with those notification requirements. Because appropriations laws expire annually and these provisions have not been enacted as permanent legislation or even appear consistently in the same appropriations acts, it is necessary to review the various Federal appropriations acts for the applicable fiscal year to determine the required level of

notification. FTA's Master Agreement incorporates the notification requirements in effect when that Master Agreement is issued.

3. FRAUD. As a reminder, 49 U.S.C. Section 5323(l) extends the criminal fraud provisions of 18 U.S.C. Section 1001 to all certificates, submissions, or statements made in connection with any program financed under the Federal transit program. In addition, the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Sections 3801 *et seq.*, and DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to any false or fraudulent statement or claim made under the Federal transit program.

4. Debarment and Suspension. Debarment and suspension regulations and guidance include the following:

   (a) DOT Debarment and Suspension Regulations. 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. *See*, 2 CFR Part 1200. Thus, the recipient must 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 Part 180.

   (b) General Services Administration (GSA) Excluded Parties List System. Even though the recipient may collect a debarment and suspension certification from the prospective third party contractor, or include a clause in the third party contract requiring disclosure, FTA strongly recommends that the recipient check the Excluded Parties List System (EPLS) maintained by the GSA and available at the Web site it maintains: **http://www.epls.gov/** before awarding a third party contract.

   (c) State Debarment and Suspension Lists. A recipient may also treat any prospective contractor or subcontractor listed on a centralized State government debarment and suspension list as nonresponsible and ineligible for contract award.

   (2) Conflict of Interest. The Common Grant Rules require the recipient to be aware of conflict of interest issues a prospective contractor might have, including lack of impartiality, impaired objectivity, or unfair competitive advantage, as discussed more fully in Chapter VI, paragraph 2.a(4)(h).

   (3) Lobbying Certification and Disclosure. If the third party contract will exceed $100,000, the recipient must obtain a lobbying certification before awarding the contract, and if applicable, a lobbying disclosure from a prospective third party contractor. *See*, DOT regulations, "New Restrictions on Lobbying"

of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise. We also refer you to Chapter V, paragraph 5(a)(1) for a discussion of how liquidated damages can be used to encourage settlements.

2 Violation or Breach. Third party contracts exceeding $100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor.

3 Suspension of Work. FTA may require provisions pertaining to suspension of work.

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

The Common Grant Rule for non-governmental recipients requires administrative, contractual, or legal contract remedies in instances in which a contractor violates or breaches terms of a contract that exceeds the small purchase threshold, which FTA recognizes as the simplified acquisition threshold. *See*, Chapter II, Subsection 3.b. The Common Grant Rule for non-governmental recipients also requires termination clauses for non-governmental recipients when procurements exceed thesmall purchase threshold, which FTA recognizes as the simplified acquisition threshold. *See*, Chapter II, Subsection 3.b. FTA strongly encourages care in developing appropriate performance remedies in all third party contracts.

b. Socio-Economic Requirements for the Acquisition of Property and Services. The following Federal laws and regulations imposing socio-economic requirements may affect a specific procurement:

(1) Labor. The following Federal labor protection laws and regulations may affect the types of property and services that may be acquired with FTA assistance:

(a) Wage and Hour Requirements. The Common Grant Rules direct the recipient to include provisions in its third party contracts requiring the contractor to compute the wages of every mechanic and laborer based on a standard workweek of 40 hours. Work in excess of the standard workweek is permitted if the worker is compensated at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The Common Grant Rules require these provisions for compliance with Sections 102 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 3702, and Department of Labor (DOL) regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5. Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. Section 3701(b)(3)(A)(iii), increased the wage and hour thresholds of $2,000 for construction work and $2,500 for nonconstruction work set forth in the

Common Grant Rules to $100,000. A federally assisted contract must exceed $100,000 before these wage and hour requirements apply to that contract.

(b) Fair Labor Standards. The Fair Labor Standards Act, 29 U.S.C. Sections 201 *et seq.*, applies to employees performing work involving commerce.

(2) Civil Rights. The following Federal civil rights laws and regulations may affect the types of property and services that may be acquired with FTA assistance:

(a) Nondiscrimination in Federal Public Transportation Programs. Federal transit law at 49 U.S.C. Section 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53 prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

(b) Title VI of the Civil Rights Act. In determining the types of property or services to acquire, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000d *et seq.* and DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21. In addition, FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for FTA Recipients," 05-13-07, provides FTA guidance and instructions for implementing DOT's Title VI0020 regulations.

(c) Environmental Justice. Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. Section 4321 note, and DOT Order 5610.2, "Department of Transportation (DOT) Order To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 FR 18377, April 15, 1997, protect minority populations and low-income populations against disproportionately high and adverse effects of federally assisted programs. FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for FTA Recipients," 05-13-07, also provides FTA guidance and instructions for implementing the DOT Order on Environmental Justice.

(d) Limited English Proficiency (LEP). Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. Section 2000d-1 note, and DOT, "Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons," December 14, 2005, clarifies the responsibilities of recipients of Federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for FTA Recipients," 05-13-07,

also provides FTA guidance and instructions for implementing the DOT Policy Guidance.

(e) Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.

1 Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. Section 794, prohibits discrimination on the basis of disability by recipients of Federal financial assistance.

2 The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.

3 DOT Public Transportation Regulations implementing Section 504 and the ADA. These regulations include DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27, DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Joint Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Examples of requirements include, but are not limited to, the following:

a Design and Construction. Accessibility requirements for the design and construction of new transportation facilities;

b Accessibility and Usability. Requirements that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;

c Complementary Paratransit Service. Requirements that public entities providing fixed-route service, (including a private non-profit entity providing public transportation service on behalf of the State or designated recipient as a subrecipient providing fixed-route service), provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service;

d Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.

(3) Environmental Protections. Federal laws and regulations require the recipient to comply with applicable environmental requirements and implement them as necessary through third party contracts.

(a) Environmental Mitigation. FTA expects the recipient to include adequate third party contract provisions to facilitate compliance with environmental mitigation measures it has agreed to implement.

(b) National Environmental Policy Act. Certain acquisitions and the timing of certain acquisitions can adversely affect the environmental review process for a project constituting a major Federal action, and may result in a violation of the National Environmental Policy Act (NEPA), 42 U.S.C. Sections 4321 through 4335, and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

1 Property. The recipient may not enter into binding arrangements for the acquisition of property that may or would affect environmental impact determinations with respect to the underlying project or otherwise interfere with any required environmental impact reviews until applicable environmental impact determinations have been made.

2 Services. Council on Environmental Quality regulations, "Other Requirements of NEPA," 40 CFR Part 1506, at Section 1506.5(c), require the recipient to obtain a disclosure statement from the contractor selected to prepare an environmental impact statement specifying that the contractor has no financial or other interest in the outcome of the project.

(c) Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites. DOT's enabling legislation has special requirements designed to protect publicly owned parks, recreation areas, wildlife and waterfowl refuges, and historic sites, at 49 U.S.C. Sections 303(b) and 303(c) (often referred to as "Section 4(f)"), that may affect the timing and methods of recipient procurements. The Federal Highway Administration (FHWA) and FTA have published implementing regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 CFR Parts 771 and 774, and 49 CFR Part 622.

(d) Clean Air. The Common Grant Rules specifically prohibit the use of facilities included in the Environmental Protection Agency (EPA) "List of Violating Facilities," in the performance of any third party contract at any tier exceeding $100,000. The contractor must also comply with all applicable standards, orders, or regulations issued under Section 306 of the Clean Air Act, as amended, 42 U.S.C. Section 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. Sections 7401 through 7671q.

(e) Clean Water. The Common Grant Rules specifically prohibit the use of facilities included in the EPA "List of Violating Facilities," in the performance of any third party contract at any tier exceeding $100,000. The contractor must also comply with all applicable standards, orders, or

regulations issued under Section 508 of the Clean Water Act, as amended, 33 U.S.C. Section 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. Sections 1251 through 1377.

(f) Recycled Products. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6962, requires governmental recipients to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. EPA guidelines, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR Part 247, direct that third party contracts of $10,000 or more with governmental recipients specify a competitive preference for products containing recycled materials identified in those EPA guidelines. For information about EPA's recovered materials advisory notices, see EPA's Web site: **http://www.epa.gov/cpg/backgrnd.htm.**

(g) Other Federal Environmental Protection Requirements. Additional third party contract provisions may be needed for compliance with other Federal laws and regulations. FTA's Master Agreement includes environmental laws and regulations that may affect the acquisition of property or services with FTA assistance such as various provisions to protect wild and scenic rivers, manage coastal zones, protect wetlands, conserve endangered species, and protect fisheries, archeological sites, and Indian sacred sites.

(4) Energy Conservation. The Common Grant Rules require third party contract provisions as necessary for compliance with applicable energy efficiency standards and policies of State energy conservation plans issued under the Energy Policy and Conservation Act, as amended, 42 U.S.C. Sections 6321 *et seq.*

(5) Preference for U.S. Property—Buy America. FTA's "Buy America" law and regulations apply to projects that involve the purchase of more than $100,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in the FTA assisted project. If FTA funds are used for the project, Buy America requirements apply to all procurement contracts under the project irrespective of whether a recipient decides to fund a discrete part of the project without FTA funds. Only if an activity is outside the FTA project and is financed entirely without funds to which FTA's Buy America regulations would apply may the recipient disregard FTA's Buy America requirements. Property that the contractor acquires to fabricate a deliverable for the recipient, such as tools, machinery, and other equipment or facilities, is not subject to FTA's Buy America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, the recipient may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether the property acquired would comply with FTA's Buy America regulations. FTA's Buy America statute does not pre-empt State laws with stricter requirements on the use of foreign articles, materials, and supplies.

FTA cautions that its Buy America regulations that apply to FTA assisted third party procurements, published at 49 CFR Part 661, differ from Federal "Buy American Act" regulations that apply to direct Federal procurements, published in the FAR at 48 CFR Chapter 1, Subparts 25.1 and 25.2. FTA strongly recommends that the recipient review FTA's Buy America regulations before undertaking any FTA assisted procurement.

(6) Shipments of Property—U.S. Flag Requirements.

(a) Shipments by Ocean Vessel. The Common Grant Rules require third party contract provisions to ensure compliance with 46 U.S.C. Section 55303 and Maritime Administration regulations, "Cargo Preference-U.S. Flag Vessels," 46 CFR Part 381, implementing the codified Cargo Preference Act. With few exceptions, the regulations require that U.S. Flag vessels be used to transport at least 50 percent of any federally assisted property.

(b) Shipments by Air Carrier. Third party contracts involving shipments of federally assisted property by air carrier will require provisions to ensure compliance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended ("Fly America" Act), 49 U.S.C. Section 40118, and GSA regulations, "Use of United States Flag Air Carriers," 41 CFR Sections 301-10.131 through 301-10.143. The regulations require shipment by U.S. flag air carriers unless such carriers are not reasonably available within the standards of GSA's implementing regulations.

(7) Project Travel—Use of U.S. Flag Air Carriers. Third party contracts to acquire transportation by air carrier needed by people participating in a federally assisted project require provisions to ensure compliance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended ("Fly America" Act), 49 U.S.C. Section 40118, and GSA regulations, "Use of United States Flag Air Carriers," 41 CFR Sections 301-10.131 through 301-10.143. The regulations require transportation by U.S. flag air carriers unless U.S. flag air carriers are not reasonably available within the standards of the GSA's implementing regulations.

c. Technical Restrictions on the Acquisition of Property and Services. The following Federal laws and regulations imposing technical requirements may affect a specific procurement:

(1) Intelligent Transportation Systems. Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

d. Public Transportation Services—Special Requirements. Although the Common Grant Rules refer to the following Federal requirements in the context of federally assisted procurements, these requirements will affect how a third party contractor implements its contract to provide public transportation services financed with Federal assistance. Consequently, the recipient must include provisions in its third party contract ensuring compliance with the following requirements, or the recipient must obtain the third party contractor's agreement in another form, as a matter of contractor responsibility, to ensure compliance with the following:

(1) Protections for Public Transportation Employees. When the recipient acquires public transportation services from a third party contractor, the terms of the recipient's DOL certification of public transportation employee protective arrangements will apply to work under the contract provided by those employees covered by the certification. That certification is required by 49 U.S.C. Section 5333(b) (often referred to as "13(c)") and implementing DOL guidelines, "Section 5333(b), Federal Transit Law," 29 CFR Part 215. Consequently, the third party contractor must comply with the terms of that DOL certification.

The Fair Labor Standards Act, 29 U.S.C. Sections 201 *et seq.*, also applies to public transportation employees performing work involving commerce.

(2) Drug Use and Testing and Alcohol Misuse and Testing. A third party contractor providing services involving the performance of safety sensitive activities must comply with 49 U.S.C. Section 5331 and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

(3) Accessibility. A third party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 *et seq.*; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)" using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. The recipient should advise its third party contractors operating public transportation services to review the requirements for public entities in this context.

(4) Protection of Animals. A third party contractor providing services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. Sections 2131 *et seq.* and Department of Agriculture regulations, "Animal Welfare," 9 CFR Subchapter A, Parts 1, 2, 3, and 4.

(5) Charter Service Restrictions. A third party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support any charter service operations except as permitted by 49 U.S.C. Section 5323(d) and FTA regulations, "Charter Service," 49 CFR Part 604.

(6) School Bus Restrictions. A third party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support exclusive school bus operations except as permitted by 49 U.S.C. Sections 5323(f) or (g) and FTA regulations, "School Bus Operations," 49 CFR Part 605, to the extent consistent with 49 U.S.C. Sections 5323(f) or (g).

e. Construction—Special Requirements. The following Federal laws and regulations impose requirements that may affect FTA assisted construction projects:

(1) Bonding. The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (*see*, Chapter II, Subsection 3.b)unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:

(a) Bid Guarantee. Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to 5 percent of its 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 to ensure that the bidder will honor its bid upon acceptance.

(b) Performance Bond. Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for 100 percent of the contract price. A "performance bond" is obtained to ensure completion of the obligations under the third party contract.

(c) Payment Bond. The Common Grant Rules generally require the third party contractor to obtain a standard payment bond for 100 percent of the contract price. A "payment bond" is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:

1 Less Than $1 Million. Fifty percent of the contract price if the contract price is not more than $1 million,

2 More Than $1 Million but Less Than $5 Million. Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million, or

3 More Than $5 Million. Two and one half million dollars if the contract price is more than $5 million.

(d) Acceptable Sureties. The Common Grant Rule 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), **http://fms.treas.gov/c570/c570.html**.

FTA encourages each governmental recipient to require similarly acceptable sureties.

(e) Reduced Bonding. FTA recognizes that bonding costs can be expensive. FTA will accept a local bonding policy that conforms to the minimums described in this subparagraph 2.h(1) of this Chapter. FTA reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project should submit its policy and rationale to the Regional Administrator for the region administering the project.

(f) Excessive Bonding. Compliance with State and local bonding policies that are greater than FTA's bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor's bankruptcy or financial failure when the work is partially completed. Nevertheless, if the recipient's "excessive bonding" requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements. Consequently, if the recipient's bonding policies far exceed those described in this subsection, FTA reminds the recipient that it may find it useful to submit its policy and rationale to the Regional Administrator for the region administering the project.

(2) Seismic Safety. The recipient must include seismic safety provisions in its third party contracts for the construction of new buildings or additions to existing buildings as required by 42 U.S.C. Sections 7701 *et seq.*, and DOT regulations, "Seismic Safety," 49 CFR Part 41 at Sections 41.117 and 41.120, implementing the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. Sections 7701 *et seq.*

(3) Equal Employment Opportunity. The Common Grant Rules require that third party construction contracts include provisions ensuring compliance with DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Chapter 60, which implement Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," October 13, 1967.

(4) Prevailing Wages. Under 49 U.S.C. Section 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Common Grant Rules require third party contracts for construction, alteration, or repair at any contract tier exceeding $2,000 to include provisions requiring compliance with the Davis-Bacon Act, 40 U.S.C. Sections 3141 *et seq.*, and implementing DOL regulations "Labor

Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction," 29 CFR Part 5. The Davis-Bacon Act requires that contractors pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires contractors to pay wages not less than once a week. The recipient must include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and must condition contract award upon the acceptance of that wage determination. These requirements are in addition to the separate Wage and Hour Requirements addressed in paragraph 2.c(1) of this Chapter IV.

(5) Anti-Kickback. Section 1 of the Copeland "Anti-Kickback" Act, at 18 U.S.C. Section 874, prohibits anyone from inducing, by any means, any person employed on construction, prosecution, completion, or repair of a federally assisted building or work, to give up any part of his or her compensation to which he or she is otherwise entitled. Section 2 of that Act, at 40 U.S.C. Section 3145, as amended, and implementing DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 CFR Part 3, impose record keeping requirement on all third party contracts for construction, alteration, or repair exceeding $2,000. The Common Grant Rules also require provisions for compliance with the Copeland "Anti-Kickback" Act, as amended, and implementing DOL regulations.

(6) Construction Safety. The Common Grant Rules require provisions to ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous as prohibited by the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 3704, and its implementing DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926. Notably, Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. Section 3701(b)(3)(A)(iii), increased the threshold for construction safety protections to $100,000 from $2,000 as set forth in the Common Grant Rules, so that a federally assisted construction contract must exceed $100,000 before these construction safety requirements apply to that contract.

(7) Labor Neutrality. Executive Order No. 13502, "Use of Project Labor Agreements for Federal Construction Projects," February 6, 2009, rescinds Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001, 41 U.S.C. Section 251 note. Consequently, a recipient may now require the use of a project labor agreement (PLA) in its third party contract, and a third party contractor or subcontractor may continue to use a PLA should it choose to do so.

(8) Preference for U.S. Property—Buy America. For any FTA assisted project having third party construction contracts exceeding $100,000, FTA's Buy America law and regulations require the third party contractor to provide property produced or

manufactured in the United States for use in the construction project that the recipient acquires, unless FTA has granted a waiver authorized by those regulations. If FTA funds are used for the project, Buy America requirements apply to all third party procurement contracts under the project irrespective of whether a recipient decides to fund a discrete part of the project without FTA funds. Only if an activity is outside the FTA project and is financed entirely without funds to which FTA's Buy America regulations would apply may the recipient disregard FTA's Buy America requirements. FTA cautions that its Buy America regulations are complex and different from the Federal "Buy American Act" regulations in the Federal Acquisition Regulation(FAR) at 48 CFR Chapter 1, Subchapter D, Part 25, Subparts 25.1 and 25.2.

Property that the contractor acquires to perform its construction activities for the recipient, such as tools, machinery, and other equipment or facilities, is not covered by FTA's Buy America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, the recipient may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether that property would comply with FTA's Buy America regulations.

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

f. Research, Development, Demonstration, Deployment, and Special Studies—Special Requirements. Procurements of research-type services can involve circumstances that bring special Federal requirements into effect. Among these are:

(1) Patent Rights. Irrespective of the status of the recipient, subrecipient, or third party contractor (for example, a large business, small business, State government, State instrumentality, local government, Indian tribe, non-profit organization, institution of higher education, individual, and so forth) the Common Grant Rules require provisions consistent with Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms," 37 CFR Part 401 (implementing the Bayh-Dole Act, 35 U.S.C. Sections 200 *et seq.*), unless the Federal Government requires otherwise. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free

license to use the resulting invention, or patent to the invention, for Federal Government purposes.

(2) Rights in Data. In general, FTA does not seek greater rights in data or copyright than described in the Common Grant Rules when it provides FTA capital assistance to support acquisitions. But when FTA provides Federal assistance to support the costs of a research, development, demonstration, or a special studies project, FTA generally seeks sufficient rights in the data developed so that the resulting data can be made available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor. FTA's general purpose in providing Federal assistance for a research, development, demonstration, or special studies project is to increase transportation knowledge, rather than limit the benefits of the project to project participants. Therefore, unless FTA determines otherwise in writing, FTA expects the following conditions to apply to rights in data requirements for FTA assisted research, development, demonstration, or special studies projects.

(a) Publication Restrictions. Except for its own internal use, the FTA Master Agreement provides that neither the recipient nor the third party contractor may publish or reproduce subject data in whole or in part, or in any manner or form, without the advance written consent of the Federal Government, unless the Federal Government has released or approved the release of that data to the public. These restrictions do not apply to an institution of higher education.

(b) Distribution of Data. Except for contracts for adaptation of automatic data processing equipment or data provided in support of an FTA capital project, each recipient and third party contractor must agree that, in addition to the rights in data and copyrights that it must provide to FTA under the Common Grant Rules, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If, for any reason, the project is not completed, all data developed under the project is expected to be delivered as FTA may direct.

In certain circumstances, however, FTA may determine that it is in the public interest to take only those rights in data identified in the Common Grant Rules.

(3) Export Control. If data developed in the course of a third party contract is subject directly or indirectly to U.S. Export Control regulations, that data may not be exported to any countries or any foreign persons, without first obtaining the necessary Federal license or licenses and complying with any applicable Department of Commerce, Export Administration Regulations, 15 CFR Part 730.

(4) Protection of Human Subjects. A third party contractor providing services involving the use of human subjects must comply with the National Research Act at 42 U.S.C. Sections 289 *et seq.*, and DOT regulations, "Protection of Human Subjects," 49 CFR Part 11.

(5) Protection of Animals. A third party contractor providing services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. Sections 2131 *et seq.*, and Department of Agriculture regulations, "Animal Welfare," 9 CFR Subchapter A, Parts 1, 2, 3, and 4.

PROTESTS, CHANGES AND MODIFICATIONS, DISPUTES, CLAIMS, LITIGATION, AND SETTLEMENTS

The Common Grant Rules assign responsibility to the recipient for resolving all contractual and administrative issues arising out of their third party procurements, including source evaluation and selection, including protests of awards, disputes, and claims using good administrative practices and sound business judgment. The Federal Transit Administration (FTA) also encourages the recipient to use appropriate alternative dispute resolution procedures. Neither FTA nor the Common Grant Rules relieve the recipient of any responsibility under its contracts to resolve disagreements that may arise in the course of contract formation or contract administration.

FTA is not a party to its recipients' third party contracts, and does not have any obligation to any participant in its recipients' third party contracts. In general, FTA will not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern. Examples of "Federal concerns" include, but are not limited to, situations "where a special Federal interest is declared because of program management concerns, possible mismanagement, impropriety, waste, or fraud." Nevertheless, FTA can become involved in the recipient's administrative decisions when a recipient's protest decision is appealed to FTA, or when the recipient seeks to use FTA assistance to support the costs of settlements or other resolutions of protests, disputes, claims, or litigation.

5. DISPUTES.

a. The Recipient's Role and Responsibilities. The Common Grant Rules charge the recipient with responsibility for evaluating and resolving third party contract disputes. If the recipient intends to request FTA's permission to use Federal assistance to support payments to a third party contractor to settle a dispute, or intends to request increased Federal assistance for that purpose, the recipient's responsibilities are as follows:

(1) Notify FTA. FTA expects the recipient to provide the following information in connection with third party contract disputes in which it is involved:

(a) Subjects. A list of disputes involving third party contracts and potential third party contracts that:

1 Have a value exceeding $100,000,

2 Involve a controversial matter, irrespective of amount, or

3 Involve a highly publicized matter, irrespective of amount.

(b) Details. The following information about each dispute:

1 A brief description of the dispute,

2 The basis of disagreement, and

3 If open, how far the dispute has proceeded, or

4 If resolved, the agreement or decision reached, and

5 Whether an appeal has been taken or is likely to be taken.

(c) When and Where. The recipient should provide this information:

1 In its next quarterly Milestone Progress Report, and

2 At its next Project Management Oversight review, if any.

Small recipients may report less frequently if no disputes are outstanding.

(d) FTA Officials to Notify. FTA also encourages the recipient to keep its FTA project manager informed about disputes with which it is involved. In particular, the recipient should contact its project manager about any unusual activity.

(2) Adequate Documentation. FTA expects the recipient to include adequate documentation in its project files of the facts, events, negotiations, applicable laws, and a legal evaluation of the likelihood of success in any potential litigation involving the dispute as may be needed to justify FTA's concurrence in any compromise or settlement, should FTA concurrence become necessary.

(3) Audit. An audit can help the recipient demonstrate that any settlement costs, if incurred, are necessary, reasonable, adequately documented, and appropriate for FTA support. The recipient should consider conducting or obtaining a formal audit to substantiate each part of a large contract dispute before entering into a settlement. The audit should be conducted in accordance with "Generally Accepted Auditing Standards" as defined by the American Institute of Certified Public Accountants. FTA also encourages the recipient to undertake an audit or similar analysis before settlement of a small dispute.

b. FTA's Role and Responsibilities. FTA generally does not become involved in negotiating the resolution of a recipient's disputes. However, FTA does reserve the right to become involved as follows:

(1) Determine Reasonableness. FTA may review the reasonableness of a negotiated settlement to determine the extent of its participation in the costs of the settlement.

(2) Review Documents. When FTA considers necessary, FTA may review the recipient's files and history pertaining to the dispute or experience under a particular grant or cooperative agreement. If the recipient has already disbursed amounts determined to be ineligible through subsequent audit or FTA review, the recipient must return those amounts to FTA, unless FTA determines otherwise.

FTA reserves the right to defer participation in settlement costs until it receives an adequate audit.

6. CLAIMS AND LITIGATION.

a. The Recipient's Role and Responsibilities. The Common Grant Rules charge the recipient with responsibility for evaluating and resolving third party contract claims and litigation resulting from a contractor's violation, default, or breach of its third party contracts with recipients of Federal assistance. The recipient is also responsible for resolving any claims and litigation the contractor may present against it. Due to FTA's financial interest in the settlement of third party contract claims and litigation, and concerns about matters with significant policy consequences to the Federal Government, FTA expects the recipient to:

(1) Notify FTA. FTA expects the recipient to provide the following information in connection with third party contract claims and litigation with which it is involved.

(a) Subjects. A list of claims and litigation involving third party contracts and potential third party contracts that:

1 Have a value exceeding $100,000,

2 Involve a controversial matter, irrespective of amount, or

3 Involve a highly publicized matter, irrespective of amount.

(b) Details. The following information about each claim or lawsuit:

1 A brief description of the claim or litigation,

2 The basis of disagreement, and

3 If open, how far the claim or litigation has proceeded, or

4 If resolved, the decision or agreement reached, and

5 Whether an appeal has been or is likely to be taken.

(c) When and Where. The recipient should provide this information:

1 In its next quarterly Milestone Progress Report, and

2 At its next Project Management Oversight review, if any.

Small recipients may report less frequently if no claims or litigation are outstanding.

(d) FTA Officials to Notify. FTA also encourages the recipient to keep its FTA project manager informed about claims and litigation with which it is

involved. In particular, the recipient should contact its project manager about any unusual activity.

(2) Legal Rights and Remedies. In resolving third party contract claims, FTA expects the recipient to take reasonable measures to pursue its rights and remedies available under law, including settlement, particularly if failure to do so would jeopardize the Federal interest in the project or cause the recipient to seek additional Federal assistance.

b. FTA's Role and Responsibilities. In support of its financial interest in the settlement of claims and litigation involving any federally assisted third party contracts, FTA has retained its discretion to assert the following rights:

(1) Proceeds Recovered. FTA retains a right to a share of any net proceeds recovered through a third party contract claim or litigation, in proportion to the amount FTA has committed to the project, unless FTA permits other uses of the proceeds recovered.

(2) Liquidated Damages. If the third party contract includes a liquidated damages provision, FTA expects the recipient to credit any liquidated damages recovered to the project, unless FTA permits other uses of the liquidated damages. For example, in negotiating the terms of a claim or litigation settlement, it may be reasonable for the recipient to exchange some or all liquidated damages that may be due the recipient for additional property or services.

INFORMAL QUOTATIONS AND AWARD

I. PURPOSE

This procedure provides instructions for the solicitation and award of bids for purchases of materials and services where the estimated cost is less than $10,000.00.

II. POLICY

This procedure is applicable to all purchases under $10,000.00, except as provided for in:

- Direct Purchases, PU-13-RC, or
- Blanket Purchase Orders and Release Notices, PU-09-RC, or
- Procurement Card Purchases, PU-21-RC, or
- Exceptions to Competitive Bidding as stated in Commuter Rail Board Ordinance, 94-1, or the most current document.

Purchases that amount of $10,000.00 or more are described in Formal Quotation and Awards, PU-05-RC.

Whenever possible and practical, METRA will endeavor to secure three or more bids (quotations) in the open market. If less than three bids are obtained, the reasons should be documented.

When a sole source is specified, a written memorandum explaining that the vendor is the only source for the materials and/or services must be provided. The memorandum must be signed by the Director of the Requisitioning Department or Division, the Senior Director, as appropriate, and the Deputy Executive Director.

Bid quotations as specified herein, may be obtained by telephone, fax, or electronic document. The solicitation documents must include the Federal Clauses Exhibit. When specifications cannot be clearly defined or bids cannot efficiently procured by telephone, written bids will be necessary.

For purchase orders that include capital funds, a price/cost analysis and history of procurement must be prepared and maintained on file if a single bid or sole source.

Multiple awards under $10,000.00 for the same materials and services in order to avoid the prescribed procedure for formal quotations and awards (PU-05-RC) are prohibited.

Departments should endeavor to accurately forecast their supply needs in order to avoid the need to frequently re-bid a contract.

Purchase orders will be awarded to the lowest, responsive and responsible bidder, if bids are obtained.

INFORMAL QUOTATIONS AND AWARD

III. DEFINITIONS

Blue Folder: See Glossary

Requisition: See Glossary

Sole Source: See Glossary

IV. RESPONSIBILITIES

Requisitioner/User
Submits requisition(s) and provides adequate specifications for items desired in accordance with Requisitioning of Materials and Services, PU-02-RC. Prepares memorandum justifying sole source requirements, signed by the Director of the Requisitioning Department or Division, the Senior Director or Deputy Executive Director as appropriate, and the Executive Director. Prepares independent cost estimate as required.

Budget Authority
Verifies availability of funds in the appropriate budget account. Reviews signatures and completeness of forms. Department Head, Director, or other designated person signs approval in box #25 on Purchase Requisition form (RC73) after checking budget. Maintains a record of all requisitions and purchases to ensure that budget limitations are not exceeded. Verifies proper Account/Distribution codes. If the requisition is approved, advise the Risk Management Division of the purchase of real property, new equipment, material, construction activities and other insurable items.

Procurement or Professional Services/Contracts Division
Determines the method of obtaining quotations. Solicits quotations and selects the lowest responsive and responsible bidder. Where possible, solicits bids to secure a minimum of three (3) qualified vendors. Receives and records all bids received. If capital funds are involved, the Federal Clauses Exhibit must be included in the solicitation documents, makes the award with approval from General Development Department. For items that are sole source, prepares memorandum justifying sole source requirement to Materials Management Department Head. Obtains signature of the Department Head, Materials Management and the Deputy Executive Director. Prepares purchase order and distributes copies to Accounts Payable, and if capital funds are involved to General Development. Advises the Risk Management Division of the purchase of real property, new equipment, construction activities, and other insurable items. Maintains contract files to show documentation for all contract phases and activities.

General Development Department

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

I. PURPOSE

This procedure sets forth policies and instructions for the acquisition, administration, and termination of contracts for A & E services by Metra, regardless of the funding mechanism.

II. POLICY:

GENERAL:

A & E services are acquired by Metra using the "Brooks" procurement method regardless of the funding mechanism. The Brooks procurement method is based on the award of contracts for services such as A & E services using a qualifications-based procurement analysis. Price is not a factor in determining the most qualified Offeror. Instead, each Offeror's qualifications are evaluated and the most qualified Offeror is selected subject to the negotiation of fair and reasonable compensation.

Proposals will be evaluated, negotiated, selected and any award shall be made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement whereby proposals are evaluated to determine which proposals are within a competitive range. Discussions and negotiations may then be carried out with Offerors within the competitive range. The Offeror selected will be the Offeror whose proposal is found to be most advantageous to Metra, based upon consideration of the Evaluation Criteria.

Metra personnel will maintain ethical standards in their professional activities. Metra personnel must avoid personal and organizational conflict-of-interest situations and avoid the appearance of such situations. Metra personnel are required to be familiar with Metra's ethics policies and all circumstances and persons covered by any type of conflict-of-interest situation.

Any proprietary information, methodology, or application that is contained in a proposal shall remain strictly confidential, will be screened for distribution only to those Metra personnel who require it for work directly connected with the project, and will not be distributed to persons not relevant to the project and not within reporting hierarchies at Metra which are relevant to the project. The confidentiality extends to the cost/profit figures contained in the proposals and the process of negotiations.

NARRATIVE DESCRIPTION OF PROCESS:

The process for a particular award of an Architectural & Engineering (A & E) services contract will be described in the respective Request for Proposals ("RFP") prepared by the

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

General Development Department

- Where capital funds (other than Section 8 funding) are involved, provides detailed guidance on contract requirements, reviews contracts for compliance with said requirements, and obtains funding concurrence as required.

Law Department

- Reviews contracts for legal compliance and provides clearance as appropriate.

Professional Services/ Contracts Division

- Approves the Evaluation Criteria prepared by Requisitioner/User.
- In concert with Requisitioner/User, identifies Evaluation Committee and Contact Person.
- Performs overall staff management, coordination, processing, execution and filing of A & E contracts, including coordination of the RFP's components (including the Federal Clauses Exhibit insertion), and issues of solicitation.
- In concert with Requisitioner/User, schedules and hosts the pre-proposal conferences (as necessary), to clarify RFP requirements and answer questions from potential Offerors.
- Reviews the initial RFP and prepares the formal RFP. Assures that there is a clear, accurate description of the technical requirements, and unambiguously as possible for the services(s) to be procured.
- Prepares solicitation advertisement and facilitates the placement of such advertisement in a newspaper of general circulation.
- Identifies target Offerors (if any) from Metra's vendor database to receive e-mails regarding solicitation and facilitates such e-mails.
- Receives proposals, performs initial review, and completes a Responsibility Determination Form with respect to each proposal.
- Conducts a canvass when it receives only one proposal.
- In concert with Requisitioner/User, schedules and hosts pre-award interviews (as necessary).
- Coordinates correspondence, if any, between Offerors and Contact Person.
- Obtains cost and other information requested by the Evaluation Committee from selected highest-ranked Offeror.

ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS (BROOKS METHOD)

B. Solicitation of Proposals

Responsible Party		Action
Professional Services/ Contracts Division (review of initial RFP)	1.	a. Receive and review the Purchase Requisition and initial RFP (including all Evaluation Criteria) and all appropriate attachments from General Development Department. b. Request Cost Estimate from Materials Department and/or the Requsitioner/User if not attached to initial RFP. c. If submitted initial RFP is approved, consult with Requisitioner/User to select Evaluation Committee and Contact Person and proceed to step (B)(2) below. d. If submitted initial RFP is not approved for any reason, forward subject initial RFP and all appropriate attachments back to Requisitioner/User with comments for revisions and re-submittal (proceed to back to step (A)(3) above). e. Complete applicable sections of Checklist - RFP's, if any.
Professional Services/ Contracts Division (preparation of formal RFP/advertisement)	2.	a. Prepare the formal RFP, which should include at least the following in the project description: overview, objectives, scope, estimated time schedule, reporting requirements, required projects documents, DBE requirements (if any), the procurement method, Evaluation Criteria and Contact Person and all appropriate Exhibits including the Federal Clauses Exhibit. b. Forward any modifications to the initial RFP to all interested parties. c. Prepare solicitation advertisement to be placed in newspaper of general circulation. d. Identify target Offerors from Metra's vendor database

All box marked in red must be filled in.

Box 3. Enter desired delivery date for needed items. Do not use ASAP.

R140517

REQUISITION

USE TYPEWRITER OR BALLPOINT. IF BALLPOINT IS USED, PRESS FIRMLY.

1. PROCUREMENT NO./SALE NO.

2. DATE

3. DELIVERY/PICK-UP REQUIRED BY

4. BUYER

5. CHECK ALL APPLICABLE:
- ☐ STANDARD PURCHASE (P)
- ☐ SOLE SOURCE (S)
- ☐ CAPITAL FUNDED (U)
- ☐ PROFESSIONAL SERVICES (E)
- ☐ REPAIR & RETURN (R)
- ☐ UNIT EXCHANGE (X)
- ☐ CONSTRUCTION (C)
- ☐ MASTER AGREEMENT (M)
- ☐ WARRANTY (W)
- ☐ SALE (Q)
- ☐ AMENDMENT (A)
- ☐ CHANGE ORDER (O)
- ☐ BLANKET PURCHASE ORDER (B)

BPO/BSO TYPE = ☐ - STOCK ☐ - NON-STOCK

BPO/BSO EFFECTIVE DATE: __/__/__

ESTIMATED NO. RELEASES ___

NO. RELEASING SITES __

6. LOCATION:
- ☐ 2067 W. 123rd St. (01) Attn: Storekeeper Blue Island, IL 60406
- ☐ 127th & Indiana Ave. (05) Attn: Storekeeper Chicago, IL 60628
- ☐ 2741 W. Grand Ave. (02) Attn: Storekeeper Chicago, IL 60612
- ☐ 547 W. Jackson Blvd. (06) Attn: Admin. Services 12 Floor East Chicago, IL 60661
- ☐ 140th St. East of Indiana (03) Attn: Storekeeper Chicago, IL 60605
- ☐ Other
- ☐ 147 W. 47th St. (04) Attn: Storekeeper Chicago, IL 60609

Box 6. Identify where and/or to whom the material should be delivered.

☐ 9. EMERGENCY REQUISITION APPROVAL

10. FINAL INSPECTION DEPARTMENT

11. SUGGESTED SOURCES (NAME, ADDRESS AND TELEPHONE NUMBER):

A. B. C.

12. PREVIOUS P.O. #/S.O. #

Box 11A. Identify suggested vendors (if any).

13. ITEM	14. ACCOUNTING/DISTRIBUTION CODE (ORGANIZATION) (ACCT. DISTRIB. CODE) (PROJECT #)	15. %	16. QTY.	17. U/M	18. METRA PART #	19. STATUS	20. DESCRIPTION	21. EST. UNIT PRICE	22. EXTENSION	23. LOC.

Box 13. Enter a line item number for each item needed, i.e., "1", "2", "3", etc.

Box 14. Accounting Distribution Codes must be complete and correct.

Freight charges are always listed as a separate line item to Account Code 00XXXX-3810-5000

Box 17. Enter Unit of Measure (U/M) abreviation from Materials System.

Box 18. If there is a Metra Part number, use Materials System to order items. UNLESS "Repair and Return," or "Unit Exchange", Enter "W"

Box 20. Enter clear description, or attach specifications.

Box 21. Enter estimated price for each unit.
Box 22. Enter total price for all items on this line. (Box 16 times Box 21.)
Box 23. Specify Storehouse Location.

24. REQUISITIONING DEPARTMENT: _____

REQUISITIONER SIGNATURE APPROVED (DEPT. MGR.)

25. REQUISITION APPROVED: BUDGET CHECKED, & AUTHORITY TO EXPEND FUNDS/TO SELL GRANTED BY:

SIGNATURE/PRINTED NAME/DATE

26. APPROVED FOR PROCESSING

DIRECTOR OF PROCUREMENT/DATE OR DIRECTOR OF PROFESSIONAL SERVICES/CONTRACTS

27. ESTIMATED TOTALS:

PAGE 1 OF ___

RC73 (7/92)

PROCUREMENT

Box 24. The two signatures must be from two different people.

Box 25. The signature must be the budget authority for the account number listed in Box 14. Also, the Estimated Totals in Box 27 must be within approval limits

REQUISITIONER'S CHECKLIST

1. Previous purchase order no._____

2. Dollar value of previous purchase order_____

3. Issue date (date signed) of previous purchase order_____

4. Expiration date of previous purchase order (if applicable)_____

5. Dollar value remaining in previous purchase order (if applicable)_____

6. If BPO, current signature authorization sheet attached ☐ Yes ☐ No. If no why?

   _____

7. If BPO, is a current price list attached? Was it checked against the previous BPO for obsolete part numbers, etc. ☐ Yes ☐ No. If no, why?

   _____

8. Did you list all the salient characteristics and/or provide a specification or drawing?
   ☐ Yes, Salient Characteristics ☐ No
   ☐ Yes, Specification ☐ No
   ☐ Yes, Drawings ☐ No

   At least one of the above three must be included. If not, the purchase requisition will be returned.

9. Did you include an Independent Cost Estimate? ☐ Yes ☐ No
   If no, the purchase requisition will be returned. An independent cost estimate is how you arrived at the dollar figure on the purchase requisition. You can obtain this information from a variety of sources such as; previous PO, Published Price Book, Estimators Manual, GSA schedule or internet research. If a BPO, how did you arrive at the "Not to Exceed Value" in addition to the individual cost estimate for each item. The independent cost estimate must be signed and dated. Attach all supporting documentations used in preparing your independent cost estimate.

10. Detailed commodity/service description (in layman's terminology) for Board summary.

    _____
    _____
    _____
    _____
    _____

11. What commodity/service is utilized for and by which department(s).

_____
_____
_____

13. Location(s) where commodity/service will be utilized.

_____
_____

14. Does this requisition require drawings? ☐ Yes ☐ No
If yes, include 12 sets.

15. Is a DBE goal required? ☐ Yes ☐No
If yes, provide Exhibit from DBE with Goal. _____%
Note: All bids over $10K should go to DBE first.

16. Will this commodity/service require vendor to perform work on Metra property?
☐ Yes ☐ No - If yes, obtain insurance requirements from the Risk Management Department.

17. If the purchase is made, what is the fiscal impact on your budget?

_____
_____
_____

17. Is this procurement capital funded? ☐ Yes ☐ No
If yes, obtain Grants Dept. approval prior to submitting to Procurement.

Prepared by:_____

Phone #:_____

Metra SM

Memorandum

DATE: February 23, 2012

TO: File

FROM: A. B. Darin, Department Head
Materials

SUBJECT: Cost Estimate for IFB/RFP No. R38928
PURCHASE AND REPAIR & RETURN OF PUMPS

The following is a cost estimate based on a representative sample of items for the above IFB/RFP.

Description	Qty.	2009 Unit Cost	2012 Estimated Unit Cost
[C.P.I.] REPAIR AND RETURN OF PUMPS			
HOURLY LABOR RATE MONDAY THROUGH FRIDAY, AFTER NORMAL BUSINESS HOURS AND ON SATURDAYS, EXCLUDING PUBLIC HOLIDAYS, IN VENDOR'S SHOP – OVERTIME RATE.	10/HR	$95.00	$102.00
HOURLY LABOR RATE IN ON SUNDAYS AND PUBLIC HOLIDAYS, IN VENDOR'S SHOP – OVERTIME RATE.	8/HR	$120.00	$128.84
HOURLY LABOR RATE MONDAY THROUGH FRIDAY, EXCLUDING PUBLIC HOLIDAYS, NORMAL BUSINESS HOURS, IN VENDOR'S SHOP – STRAIGHT TIME RATE	40/HR	$79.00	$84.82
MILEAGE CHARGE FOR FIELD REPAIRS WITHIN 6 COUNTY NORTHEAST ILLINOIS AREA	80/MI	$0.50	$0.54
[P.P.I.] NEW PUMPS AND ASSOCIATED ITEMS			
WG30-3-460 SUBMERSIBLE GRINDER PUMP	12/EA	$3,400.00	$3868.78
4WHV50M4-43	12/EA	$2,895.00	$3,294.15
4WHV30M4-03	12/EA	$2,855.00	$3,248.64
B&G ALL BRASS CENTRIFUGAL PUMP #1522	10/EA	$2,500.00	$2,844.69

JM H:\COST ESTIMATES 2012\Johnson\R38928.doc

Metra is the registered service mark for the Northeast Illinois Regional Commuter Railroad Corporation.

SUBJECT: Cost Estimate for IFB/RFP No. R38928
REPAIR AND RETURN OF PUMPS

Indices						
Index	2006-2007 %	2007-2008 %	2008-2009 %	2009-2010 %	2010-2011 %	2011-2012 %
C.P.I				2.7	1.5	4.1
P.P.I				4.4	4.0	4.8
C.M.I						

REFERENCE: PREVIOUS P.O. #B99720

MISC. FACTORS: ESTIMATED TOTAL @ $150,000.00 FOR A 2-YEAR PERIOD

Indices for Use With Cost Estimates & Cost & Price Analysis

February 1, 2012

2006 - 2007	C.P.I.	=	+	2.5 %
	P.P.I.	=	+	1.1 %
	C.M.I.	=	+	16.7 %
2007 – 2008	C.P.I.	=	+	4.1%
	P.P.I.	=	+	6.3%
	C.M.I.	=	+	16.8%
2008 - 2009	C.P.I.	=	+	0.1%
	P.P.I.	=	+	0.9%
	C.M.I.	=	+	24.3%
2009 – 2010	C.P.I.	=	+	2.7 %
	P.P.I.	=	-	4.4 %
	C.M.I.	=	-	12.3 %
2010 - 2011	C.P.I.	=	+	1.5 %
	P.P.I.	=	+	4.0 %
	C.M.I.	=	+	15.5 %
2011 – 2012	C.P.I.	=	+	3.0%
	P.P.I.	=	+	4.8%
	C.M.I.	=	+	6.4%

C.P.I. = Consumers Prices Index
P.P.I. = Producers Price Index
C.M.I. = Crude Materials Index

- Percentages furnished by US Department of Labor, Bureau of Labor Statistics. All percentages based on US National average. All items are less food and energy factors.

Please Note: For all professional services or labor intensive services, use C.P.I. as basis of increase.

For all finished materials & equipment purchases, use P.P.I. as basis of increase.

For all raw material purchases (steel, copper, aluminum, timber, concrete, excluding all energy products, i.e. Oil), use C.M.I. as basis of increase.

R 138928 M

1/24/12 Rm

REQUISITION

USE TYPEWRITER OR BALLPOINT.
IF BALLPOINT IS USED, PRESS FIRMLY.

1. PROCUREMENT NO./SALE NO. R38928
2. DATE 01/11/12
3. DELIVERY/PICK-UP REQUIRED BY 03/11/12
4. BUYER JOHNSON

5. CHECK ALL APPLICABLE:
- ☐ STANDARD PURCHASE (P)
- ☐ SOLE SOURCE (S)
- ☐ CAPITAL FUNDED (U)
- ☐ PROFESSIONAL SERVICES (E)
- ☐ REPAIR & RETURN (R)
- ☐ UNIT EXCHANGE (X)
- ☐ CONSTRUCTION (C)
- ☐ MASTER AGREEMENT (M)
- ☐ WARRANTY (W)
- ☐ SALE (Q)
- ☐ AMENDMENT (A)
- ☐ CHANGE ORDER (O)
- ☒ BLANKET PURCHASE ORDER (B)

BPO/BSO TYPE = ☐ - STOCK ☒ - NON-STOCK
BPO/BSO EFFECTIVE DATE 03/11/12
ESTIMATED NO. RELEASES 50
NO. RELEASING SITES 1

6. LOCATION:
- ☒ 2067 W. 123rd St. (01) Attn: Storekeeper Blue Island, IL 60406
- ☒ 2741 W. Grand Ave. (02) Attn: Storekeeper Chicago, IL 60612
- ☐ 14th St. East of Indiana (03) Attn: Storekeeper Chicago, IL 60605
- ☐ 147 W. 47th St. (04) Attn: Storekeeper Chicago, IL 60609
- ☒ 127th & Indiana Ave. (05) Attn: Storekeeper Chicago, IL 60628
- ☐ 547 W. Jackson Blvd. (06) Attn: Admin. Services 12 Floor East Chicago, IL 60661
- ☐ Other

☐ 9. EMERGENCY REQUISITION APPROVAL

10. FINAL INSPECTION DEPARTMENT

11. SUGGESTED SOURCES (NAME, ADDRESS AND TELEPHONE NUMBER):

OMNI PUMP

B. IRED ARMS

C. MEADE

12. PREVIOUS P.O. #/S.O. # 2009 B99720

13. ITEM	ACCOUNTING/DISTRIBUTION CODE [ORGANIZATION] [ACCT. DISTRIB. CODE] [PROJECT #]	15. %	16. QTY.	17. U/M	18. METRA PART #	19. STATUS	20. DESCRIPTION	21. EST. UNIT PRICE	22. EXTENSION	23. LOC.
1	AS RELEASED		2	YR	BPO FOR THE PURCHASE & SERVICE					
					REPAIR FOR ELECTRIC PUMPS.					
					THIS P.O. WILL BE FOR 2 YRS IN					
					THE AMOUNT OF 150,000					
					Requires Insurance					

PROCUREMENT DEPARTMENT 2012 JAN 24 P 4:37

24. REQUISITIONING DEPARTMENT: ENGR

J Tam — REQUISITIONER SIGNATURE
1-17-12 — APPROVED (DEPT. MGR.) Joseph L. Lorenzini
J-TAM X6932

25. REQUISITION APPROVED: BUDGET CHECKED, & AUTHORITY TO EXPEND FUNDS/TO SELL GRANTED BY:
R.C. Schuster 1-18-12 R.C. SCHUSTER
SIGNATURE/PRINTED NAME/DATE

26. APPROVED FOR PROCESSING 1/17/12
Carolyn Capranica
DIRECTOR OF PROCUREMENT/DATE OR DIRECTOR OF PROFESSIONAL SERVICES/CONTRACTS

27. ESTIMATED TOTALS: 150,000

PAGE 1 OF 1

RC73 (7/92) Chief Engineering Officer PR[illegible]EMENT

B99720 2c 9

PRICE LIST

Repair and Return of Pumps

Item #	DESCRIPTION	QTY	Unit of Measure	Unit Price	Extension
1	Hourly labor rate, Monday through Friday, excluding public holidays, normal business hours, in vendor's shop (straight time rate).	40	Hour	$79.00	$3,160.00
2	Hourly labor rate Monday through Friday, after normal business hours and on Saturdays, excluding public holidays, in vendor's shop (overtime rate).	10	Hour	$95.00	$950.00
3	Hourly labor rate in on Sundays and public holidays, in vendor's shop (overtime rate).	8	Hour	$120.00	$960.00
4	Hourly labor rate, Monday through Friday, excluding public holidays, normal business hours at Metra's facilities (overtime rate).	40	Hour	$120.00	$4,800.00
5	Hourly labor rate Monday through Friday, after normal business hours and on Saturdays, excluding public holidays at Metra's facilities (overtime rate).	10	Hour	$120.00	$1,200.00
6	Hourly labor rate on Sundays and public holidays at Metra's facilities (overtime rate).	8	Hour	$120.00	$960.00
7	Costs for materials used in repair process.	$1,000.00	Lot	30 % Mark-Up	$1,300.00
8	Mileage charge for field repairs within 6 County Northeast Illinois Area.	80	Miles	$0.50	$40.00

PRICE LIST

New Pumps and Associated Items

Item #	DESCRIPTION	QTY	Unit of Measure	Unit Price	Extension
9	Bell & Gossett 2" circulating Pump #100214	10	Ea.	$710.00	$7,100.00
10	B & G 1¼" Circulating Pump #106189	10	Ea.	$350.00	$3,500.00
11	B & G All Brass Centrifugal Pump #1522	10	Ea.	$2,500.00	$25,000.00
12	B & G Motor Alternating Current 1/3 H.P.	10	Ea.	$600.00	$6,000.00
13	B & G Impeller Potable Water 186683	10	Ea.	$400.00	$4,000.00
14	Marlow Pump Self Prime Centrifugal Pump 3" for Suction.	10	Ea.	$2,500.00	$25,000.00
15	WHVM-5 Submersible Sewage Pump	10	Ea.	$563.00	$5,630.00
16	ME50S-11 Submersible Sump/Effluent	12	Ea.	$721.00	$8,652.00
17	SPS-6 Submersible Dewatering Pump	12	Ea.	$140.00	$1,680.00
18	WG30-3-460 Submersible Grinder Pump	12	Ea.	$3,400.00	$40,800.00

PRICE LIST

New Pumps and Associated Items

Item #	DESCRIPTION	QTY	Unit of Measure	Unit Price	Extension
19	WHR-21-DS-LD Submersible Sump/Sewage	13	Ea	$1,180.00	$ 15,340.00
20	SRM4M-1 Sewage Ejector	10	Ea.	$470.00	$4,700.00
21	WHR7-43 Sewage Pump	12	Ea.	$1,150.00	$13,800.00
22	MW50-21 Sewage Pump	12	Ea.	$568.00	$6,816.00
23	MW50-11 Pump End	10	Ea.	$563.00	$5,630.00
24	MW50-11 Motor	10	Ea.	$240.00	$2,400.00
25	SRM4PC-1 Pump End	10	Ea.	$430.00	$4,300.00
26	SRM4PC-1 Motor	10	Ea.	$180.00	$1,800.00
27	WHRH20-03 Submersible Pump	10	Ea.	$1,500.00	$15,000.00
28	WHRH-543 Submersible Pump	10	Ea.	$1,220.00	$12,200.00
29	WHR10-43	13	Ea.	$1,295.00	$16,835.00
30	WHR5-43	13	Ea.	$990.00	$12,870.00
31	4WHV30M4-03	12	Ea.	$2,855.00	$34,260.00
32	4WHV50M4-43	12	Ea.	$2,895.00	$34,740.00
33	MW50-11	10	Ea.	$550.00	$5,500.00

Add Price Extensions for Items 1 thru 33 and insert here → → → → $ 326,923.00

Note: Vendor must quote all items to be deemed responsive.

R38928

PRICE LIST

Repair and Return of Pumps

2009

Item #	DESCRIPTION	QTY	Unit of Measure	Unit Price	Extension
1	Hourly labor rate, Monday through Friday, excluding public holidays, normal business hours, in vendor's shop (straight time rate).	40	Hour	$ 79.	$
2	Hourly labor rate Monday through Friday, after normal business hours and on Saturdays, excluding public holidays, in vendor's shop (overtime rate).	10	Hour	$ 95	$
3	Hourly labor rate in on Sundays and public holidays, in vendor's shop (overtime rate).	8	Hour	$ 120.00	$
4	Hourly labor rate, Monday through Friday, excluding public holidays, normal business hours at Metra's facilities (overtime rate).	40	Hour	$	$
5	Hourly labor rate Monday through Friday, after normal business hours and on Saturdays, excluding public holidays at Metra's facilities (overtime rate).	10	Hour	$	$
6	Hourly labor rate on Sundays and public holidays at Metra's facilities (overtime rate).	8	Hour	$	$
7	Costs for materials used in repair process.	$1,000.00	Lot	30 % Mark-Up	$ 1300.00
8	Mileage charge for field repairs within 6 County Northeast Illinois Area.	80	Miles	$ 0.50	$

PRICE LIST

New Pumps and Associated Items

Item #	DESCRIPTION	QTY	Unit of Measure	Unit Price	Extension
9	Bell & Gossett 2" circulating Pump #100214	10	Ea.	$ 710	$
10	B & G 1¼" Circulating Pump #106189	10	Ea.	$	$
11	B & G All Brass Centrifugal Pump #1522	10	Ea.	$ 2500	$
12	B & G Motor Alternating Current 1/3 H.P.	10	Ea.	$	$
13	B & G Impeller Potable Water 186683	10	Ea.	$	$
14	Marlow Pump Self Prime Centrifugal Pump 3" for Suction.	10	Ea.	$ 2500	$
15	WHVM-5 Submersible Sewage Pump	10	Ea.	$	$
16	ME50S-11 Submersible Sump/Effluent	12	Ea.	$ 721	$
17	SPS-6 Submersible Dewatering Pump	12	Ea.	$	$
18	WG30-3-460 Submersible Grinder Pump	12	Ea.	$ 3400	$

PRICE LIST

New Pumps and Associated Items

2001

Item #	DESCRIPTION	QTY	Unit of Measure	Unit Price	Extension
19	WHR-21-DS-LD Submersible Sump/Sewage	13	Ea	$ 1180.	$
20	SRM4M-1 Sewage Ejector	10	Ea.	$ 470	$
21	WHR7-43 Sewage Pump	12	Ea.	$ 1150	$
22	MW50-21 Sewage Pump	12	Ea.	$ 568	$
23	MW50-11 Pump End	10	Ea.	$ 563	$
24	MW50-11 Motor	10	Ea.	$ 240	$
25	SRM4PC-1 Pump End	10	Ea.	$ 430	$
26	SRM4PC-1 Motor	10	Ea.	$ 180	$
27	WHRH20-03 Submersible Pump	10	Ea.	$ 1500	$
28	WHRH-543 Submersible Pump	10	Ea.	$ 1220	$
29	WHR10-43	13	Ea.	$ 1295	$
30	WHR5-43	13	Ea.	$ 990	$
31	4WHV30M4-03	12	Ea.	$ 2855	$
32	4WHV50M4-43	12	Ea.	$ 2895	$
33	MW50-11	10	Ea.	$ 550	$

Add Price Extensions for Items 1 thru 33 and insert here → → → → $ _____

Note: Vendor must quote all items to be deemed responsive.

SPECIAL CONDITIONS

1. The above labor rates (items 1 through 6) are for repairs and preventive maintenance to various types and styles of pumps.

2. All repair work must be done by successful bidders' own workforces. No work may be sub-contracted out.

3. Cost of labor rates to include all costs for labor, equipment, machinery, material handling, tooling, vehicles and all variable or fixed costs, excluding replacement parts.

4. Prices to Metra to be based on bidders actual costs of materials (based on actual vendor's invoice). For bid evaluation purposes only, $1,000.00 has been utilized as the bidder's material cost. Add percentage of mark-up to this base cost and extend this value to the end column. (i.e., 50% mark-up would be calculated at $1,000.00 times 1.50 which equated to a cost to Metra of $1,500.00.)

5. All transportation costs, (shipping, handling and insurance) are to be included in the quoted pricing for Items 9 through 33. All transportation costs for repair parts to be billed at vendors actual incurred cost without mark-up.

6. Vendor shall show documented proficiency of a minimum of three (3) years in the repair of pumps.

7. Vendor shall be available to conduct repairs on a 24 hour a day, 7 day a week basis.

8. Vendor shall provide at a minimum, 90 day warranty on all parts and labor.

9. Basis of Award: Award to be made on a Total Lot Basis of Items 1 through 33 to the lowest responsive and responsible bidder. Bidders must multiply quantity times unit prices and insert U. S. dollar value on Extension Line. All line items must be priced, properly extended and totalled for your bid to be considered responsive.

VENDOR INFORMATION

Company Name: _____

Bid Preparer's Signature: _____

Preparer's Name & Title: (Print) _____

Preparer's Phone No.: ( ) _____

Preparer's Fax No.: ( ) _____

PURCHASE ORDER

PAGE _____ OF _____

Northeast Illinois Regional Commuter Railroad Corporation
D/B/A Metra
547 W. Jackson Blvd.
Chicago, Illinois 60661

NOTICE TO VENDOR FOR PROMPT PAYMENT:
Send your invoice (in duplicate) to Metra, 547 W. Jackson Blvd., Attn: Accounts Payable, indicate Metra P.O. and Item # on the invoice, all shipping papers & each container. Inside delivery unless otherwise specified.

DATE: 05/01/2009	PURCHASE ORDER NO.: 899720
DELIVERY REQUIRED BY: 05/14/2011	BUYER: (312) 322-6899 DENISE JOHNSON
F O B: DESTINATION	PAYMENT TERMS: 02 NET 30 DISC 0
SHIP TO: LOCATION(S) IN "DESCRIPTION" BELOW	

ITEM NO.	QTY. ORDERED	U/M	METRA STOCK GUIDE	DESCRIPTION	UNIT PRICE	EXTENSION
1	1	EA	- - 99	SHIP DATE: 05/14/2011 BLANKET PURCHASE ORDER ========== THIS BLANKET PURCHASE ORDER FOR REPAIR & SERVICE OF ELECTRIC PUMPS WILL BE FOR A TWO (2) YEAR PERIOD FROM 05/15/09 TO 05/14/11, OR UNTIL THE BLANKET PURCHASE ORDER TOTAL HAS BEEN REACHED, WHICHEVER OCCURS FIRST. THIS BLANKET PURCHASE ORDER WILL HAVE A NOT TO EXCEED VALUE OF $200,000.00. ========== NOTE: ALL TERMS AND CONDITIONS SET FORTH IN INVITATION FOR BID NO. 18040 (SEE ATTACHED EXHIBIT 1) WILL APPLY TO THIS BLANKET PURCHASE ORDER. ========== NOTE: THIS CONTRACT PURCHASE IS SUBJECT TO APPROPRIATION OF FUNDS EACH YEAR. ==========	$ 0.00	$ 0.00

DEPARTMENT	REQUISITION/QUOTATION		P.O TOTAL
ENGR	R18040	Metra is exempt from state and local taxes. The contractor certifies that no excise taxes are included in prices unless required under federal law for tax exempt entities.	

This purchase order expressly limits acceptance to the terms stated herein, set forth on the reverse side hereof. Any additional or different terms and conditions proposed by seller are objected to and hereby rejected.

ORDINANCE NO. MRC 94-1 DATE 9-20-1994 SIGNATURE SEE PAGE 4 OF 4 DATE

RC 329 (3-91)

PROCUREMENT

PURCHASE ORDER

PAGE 1 OF

Northeast Illinois Regional Commuter Railroad Corporation
D/B/A Metra
547 W. Jackson Blvd.
Chicago, Illinois 60661

Cant-Pump Repairs, Inc.
9224 Chestnut Ave.
Franklin Park, IL 60131
Attn: Pete Moratis

NOTICE TO VENDOR FOR PROMPT PAYMENT:
Send your invoice (in duplicate) to Metra, 547 W. Jackson Blvd., Attn: Accounts Payable, indicate Metra P.O. and Item # on the invoice, all shipping papers & each container. Inside delivery unless otherwise specified.

DATE 2/23/11	PURCHASE ORDER NO. B99720 Amendment No. 1
DELIVERY REQUIRED BY 5/31/12	BUYER. Denise Johnson
F O B Destination	PAYMENT TERMS Net 30
SHIP TO: Location(s) in "Description" below	

ITEM NO.	QTY. ORDERED	U/M	METRA STOCK GUIDE	DESCRIPTION	UNIT PRICE	EXTENSION
				Vendor I.D. # 0004196200 AMENDMENT NO. 1		
				Purchase Order total brought forward from B99720, dated 5/1/09.		$200,000.00
				This Amendment No. 1 is being issued for the following: 1. Extend Blanket Purchase Order from 5/15/11 thru 5/31/12. 2. BPO total remains "not to exceed": $200,000.00. 3. This confirms telephonic and faxed approval of this amendment between Denise Johnson and Anna Wybraniec (representing Mike O'Connor) on 2/23/11. 4. All other terms and conditions as set forth in the blanket purchase order remains unchanged. NOTE: This contract is subject to appropriation of funds each year.		

DEPARTMENT	REQUISITION/QUOTATION		P.O TOTAL
MOR	R35242	Metra is exempt from state and local taxes. The contractor certifies that no excise taxes are included in prices unless required under federal law for tax exempt entities.	See Page 2 of 2

This purchase order expressly limits acceptance to the terms stated herein, set forth on the reverse side hereof. Any additional or different terms and conditions proposed by seller are objected to and hereby rejected.

ORDINA IO. NIRC 94-1 DATE 9/20/94 SIGNATURE See Page 2 of 2 DATE

PF REMENT

RC 329 (3-91)

SPECIAL CONDITIONS

1. The above labor rates (items 1 through 6) are for repairs and preventive maintenance to various types and styles of pumps.

2. All repair work must be done by successful bidders' own workforces. No work may be sub-contracted out.

3. Cost of labor rates to include all costs for labor, equipment, machinery, material handling, tooling, vehicles and all variable or fixed costs, excluding replacement parts.

4. Prices to Metra to be based on bidders actual costs of materials (based on actual vendor's invoice). For bid evaluation purposes only, $1,000.00 has been utilized as the bidder's material cost. Add percentage of mark-up to this base cost and extend this value to the end column. (i.e., 50% mark-up would be calculated at $1,000.00 times 1.50 which equated to a cost to Metra of $1,500.00.)

5. All transportation costs, (shipping, handling and insurance) are to be included in the quoted pricing for Items 9 through 33. All transportation costs for repair parts to be billed at vendors actual incurred cost without mark-up.

6. Vendor shall show documented proficiency of a minimum of three (3) years in the repair of pumps.

7. Vendor shall be available to conduct repairs on a 24 hour a day, 7 day a week basis.

8. Vendor shall provide at a minimum, 90 day warranty on all parts and labor.

9. Basis of Award: Award to be made on a Total Lot Basis of Items 1 through 33 to the lowest responsive and responsible bidder. Bidders must multiply quantity times unit prices and insert U. S. dollar value on Extension Line. All line items must be priced, properly extended and totalled for your bid to be considered responsive.

VENDOR INFORMATION

Company Name: Omni-Pump Repairs, Inc.

Bid Preparer's Signature:

Preparer's Name & Title: (Print) Peter Moraitis Secretary

Preparer's Phone No.: (847) 451-0000

Preparer's Fax No.: (847) 451-0119

Metra

Meeting Attendance

Subject: PURCHASE REQUISITION TRAINING

Date 6/26/2012 Time 1:30 to 3pm Location 547 - 6th FLOOR TRAINING ROOM

Name	Affiliation/Position	Phone No.	E-mail Address (if applicable)
Ken Rabe	Engr Supv	6164	KRabe@metrarr.com
Dave Bey	Mech Project Mngr	7648	DBeyn@metrarr.com
JOE LAASE	MED	7125	JLAASE@METRARR
Tom Kositzky	MED	5561	TKositzky@metrarr
Martha DeSanto	Eng / Gen Clerk	6199	mdalSanto@metrarr.com
Pete Post	Foreman	2566	PPost@metrarr.com
Tony Elkind	FOREMAN	50	aelkind@METRARR.com
Tom Noesen	FOREMAN	4146	TNOESEN@METRARR.com
Tom Rossi	Com Eng	8267	Trossi@metrarr.com
David Opilka	Mechanical	4084	dopilka
Alejandro Reyes	Mechanical	6595	areyes@metrarr.c
Jim Bowen	Mechanical	6990	JBowen@metra.com
Christopher Persons	Mechanical	8725	CPersons@metrarr.co
Keena E Jordan	Mechanical Foreman	7524	Kjordan@metrarr.com
[illegible]	Mechanical Foreman	7736	[illegible]@metrarr
[illegible]	Mechanical/Foreman	6147	[illegible]@metrarr.com
Carlos Pamboa	Proc Svcs/Contracts	6668	cpamboa@metrarr.com
JONATHAN TAM	CIVIL ENGINEER	6932	jtam@metrarr.com
Craig Ring	Manager Engineering	6996	Cring@METRARR
Keith Philpot	Fleet Admin	6589	KPhilpot@metrarr
Bruce Darin	Materials	6655	BDARIN@METRARR.COM
Denise Johnson	Procurement	6654	djohnson@metrarr.com
DAVE YOUNG	LAW	6688	dyoung@metrarr.com
Anthony Ogribere	Real Estate	8036	aogribere@metrarr
Karen Hullinger	LAW	6692	khullinger@metrarr
CAROLYN CAPRANICA	Procurement	6667	ccapranica@metrarr.com
Geoffrey Urban	Mat. Mgmt.	6664	gurban@metrarr.com

2/02

Metra

Meeting Attendance

Subject: PURCHASE REQUISITION TRAINING

Date 6/27/2012 Time 1:30-3 pm Location 547 - 6th FLOOR TRAINING ROOM

Name	Affiliation/Position	Phone No.	E-mail Address (If applicable)
JAIME GUECO	MECHANICAL FOREMAN	(312) 287-2545	
Darin Crouch	Mech. Foreman	(312) 287-2572	
JOE Fadke	Mech Foreman	312 322 7735	
DAVE STARKOWITZ	MECH. FOREMAN	312 322 7735	
A. RATLIFF	MECH Foreman.	312 322 5640	
B. ROBLES	MECH FOREMAN	312 6560806	
MARION ALCOSER	STENO/Clerk	2753	malcoser@Metrarr.com
Jack Rabens	Sr Dist Acct	4145	jrabens@metrarr.com
John Meyer	Signal Super/Eng. Mike	4141	
JOSEPH ONESTO	SENIOR BUYER	6659	JONESTO@METRARR.COM
MARY BAKER	SECRETARY	6604	
Allen DeBraal	MECHANICAL	6598	
Brenda Resendez	Buyer	6671	
Mike Haskins	Mechanical	8165	
CARLOS GAMBOA	PROF SVCS/CONTRACTS	6668	cgamboa@metrarr.com
Urbano Domin	[illegible]	6662	
Jen Zellers	Purchasing	6663	
Victor M. Carrillo	Mechanical	6568	vcarrillo@metrarr.com
Mike Panayotovich	Capital Signal	326-3136 5531	
Bruce Farin	Materials Management	6655	BFARIN@METRARR.COM
Robert Lee	MECHANICAL	6686	rlee@metrarr.com
CAROLYN CAPRANICA	Procurement	6667	
JIM DERWINSKI	MECH	6575	
Marko Neskovic	Engineering	7861	

2/02

ATTACHMENT F

CHECK LIST – IFB's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	IFB No. _____ Section A SOLICATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Purchase Requisition	
2.	Specifications	
3.	DBE Goals	
4.	Requirement Justification – Contract/PO Term Does Not Extend Past 5 Years	
5.	Independent Cost Estimate	
6.	Bidder's List	
7.	Justification of Procurement Method	
8.	Copy of IFB	
9.	Proof of Publication	
10.	IFB Attachments/ Modifications	
11.	Pre-bid Minutes & List of Attendees	
12.	Correspondence with Bidders	
13.	Protests Prior to Bid Opening	
14.	Interoffice Correspondence	
15.	Review for Responsiveness (On Bid Tabulation)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST – IFB's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	IFB No. _____ Section B AWARD DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Copy of Each Bid	
2.	Letters of Returned Late Bids or Bid Errors	
3.	Bid Analysis/Tabulation Sheet	
4.	Technical Evaluation/Award Recommendation	
5.	Affirmative Action Evaluation/DBE Goal Exhibit Schedules	
6.	Bidder Responsibility Determination	
7.	Price Analysis or Cost Analysis	
8.	Record of Negotiation for Single Bid (If Applicable)	
9.	Justification of Contract Type Blanket P.O./Sole Source, etc.	
10.	Notice of Award	
11.	Notice to Unsuccessful Bidders (Bond, Check Returns) (If Applicable)	
12.	Legal Review of Contract Documents (Copy of Routing Slip)	
13.	Contract Document (Drawings not Required)	
14.	Performance/Material Bonds, Insurance Certificates (If Applicable)	
15.	Notice to Proceed (If Applicable)	
16.	Purchase Order (If Applicable)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST - IFB's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	IFB No. _____ Section C CONTRACT ADMINISTRATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Post Award Conference (If Applicable)	
2.	Status Reports (If Applicable)	
3.	Change Notices/Modification/Change Orders	
4.	Site Visit Reports (If Applicable)	
5.	Progress Meeting Minutes (If Applicable)	
6.	Quality Assurance Records (If Applicable)	
7.	Termination/Stop Work Notices or Resolution Plan (If Applicable)	
8.	Notice of Claims (If Applicable)	
9.	Release of Claims/Bonds (If Applicable)	
10.	Assignments (If Applicable)	
11.	Audit Reports (If Applicable)	
12.	Punch List Discrepancies	
13.	Liquidated Damages (If Applicable)	
14.	Close Out Documents (If Applicable)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section A SOLICATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Purchase Requisition	
2.	Rationale for Method of Procurement:	
3.	Specifications/Statement of Work	
4.	Justification for Procurement	
5.	Term of Contract Does Not Exceed 5 Years.	
6.	Cost Estimate	
7.	Set Aside Decision/DBE Goal	
8.	Justification of Procurement Method	
9.	List of Prospective Proposers	
10.	Proof of Publication	
11.	Copy of RFP	
12.	Addenda	
13.	Pre-proposal Minutes & List of Attendees	
14.	Correspondence with Bidders	
15.	Interoffice Correspondence	
16.	Review of Responsiveness (On Bid Tabulation)	

Contract No.: _____

Contract Administrator: _____

Date: _____

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section B AWARD DOCUMENTS	
Tab No.	Document(s)	Audited By
1.	Copy of Each Proposal (In Storage)	
2.	Proposal Tabulation Sheet	
3.	Evaluation Team Certification Forms	
4.	Evaluation Sheet/Matrix	
5.	Determination of Competitive Range	
6.	Invitation of Oral Interviews/Presentations	
7.	Notice of Rejection	
8.	Minutes of Discussions	
9.	Correspondence with Proposers	
10.	Cost or Price Analysis	
11.	Justification for Contract Type	
12.	Negotiation Memorandum	
13.	Copy of Each Best and Final Offer (If Applicable)	
14.	Award Recommendation Memorandum	
15.	Board Consent	
16.	Legal Review of Contract Documents (Routing Slip)	
17.	Notice of Award	
18.	Notice to Unsuccessful Proposers	
19.	Procurement Summary	
20.	Bonds (If Applicable)	
21.	Certification of Insurance	
22.	Contract Document (Drawings not Required)	
23.	Notice to Proceed	
24.	Contract/Purchase Order	

Contract No.: _____

Contract Administrator: _____
Date: _____

CHECK LIST – RFP's

Applicable items should be entered in chronological order. Documents maintained in the file will be filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab column.

	RFP No. _____ Section C CONTRACT ADMINISTRATION DOCUMENTS	
Tab No.	**Document(s)**	**Audited By**
1.	Post Award Conference	
2.	Quality Assurance Records	
3.	Change Notices/Modification/Change Orders	
4.	Periodic Status Reports	
5.	Site Visit Reports	
6.	Termination/Stop Work Notices or Resolution Plan	
7.	Notice of Claims	
8.	Release of Claims/Bonds	
9.	Assignments	
10.	Notice of Final Payment	
11.	Audit Reports	
12.	Liquidated Damages	
12.	Close out Documentation	

Contract No.: _____

Contract Administrator: _____

Date: _____