



**PURCHASING  
POLICY  
AND  
PROCEDURES  
MANUAL**

JULY 1, 2014

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## **PART I**

### **FOREWORD**

The intent of this Purchasing Manual is to provide guidelines for Department Directors and other City employees who are involved in any segment of the procurement process for their departments. The purpose of the policy and procedures stated herein is to clarify and standardize procurement practices, and to provide increased economy in City procurement activities. The cooperation of all employees is essential if the City is to maximize the economic benefit of materials, equipment and services purchased by the City.

This manual does not answer all questions relating to purchasing, but it does provide a foundation for a sound procurement system. It is hoped that it will prove beneficial both to the City and to the City employees using the manual. The material may be revised occasionally as changes occur in policy or state law, federal law, the purchasing field, or in the economy.

This manual also describes procedures that should be followed prior to the sale, lease, or other disposition of real property (land and/or buildings) owned by the City.

This manual is effective immediately upon issuance and supersedes all previous purchasing instructions or directives.

## **National Institute of Governmental Purchasing (NIGP) Code of Ethics**

The Institute believes, and it is a condition of membership, that the following ethical principles should govern the conduct of every person employed by a public sector procurement or materials management organization:

Seeks or accepts a position as head (or employee) only when fully in accord with the professional principles applicable thereto and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.

Believes in the dignity and worth of the service rendered by the organization, and the societal responsibilities assumed as a trusted public servant.

Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.

Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.

Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.

Believes that members of the Institute and its staff should at no time, or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions.

Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.

Resists encroachment on control of personnel in order to preserve integrity as a professional manager.

Handles all personnel matters on a merit basis, and in compliance with applicable laws prohibiting discrimination in employment on the basis of politics, religion, color, national origin, disability, gender, age, pregnancy and other protected characteristics.

Seeks or dispenses no personal favors. Handles each administrative problem objectively and empathetically, without discrimination.

Subscribes to and supports the professional aims and objectives of the National Institute of Governmental Purchasing, Inc.

*National Institute of Governmental Purchasing 151 Spring Street Herndon, VA 20170  
703-736-8900 [www.nigp.org](http://www.nigp.org)*

## **GUIDELINES TO THE NIGP CODE OF ETHICS**

### **I. RESPONSIBILITY TO YOUR EMPLOYER**

Follow the lawful instructions or laws of the employer.

Understand the authority granted by the employer.

Avoid activities which would compromise or give the perception of compromising the best interest of the employer.

Reduce the potential for any charges of preferential treatment by actively promoting the concept of competition.

Obtain the maximum benefit for funds spent as agents for the employer.

### **II. CONFLICT OF INTEREST**

Avoid any private or professional activity that would create a conflict between your personal interest and the interests of your employer.

Avoid engaging in personal business with any company that is a supplier to your employer.

Avoid lending money to or borrowing money from any supplier.

### **III. PERCEPTION**

Avoid the appearance of unethical or compromising practices in relationships, actions and communications.

Avoid noticeable displays of affection, which may give an impression of impropriety.

Avoid holding business meetings with suppliers outside the office. When such meetings do occur, the meeting location should be carefully chosen so as not to be perceived as inappropriate by other persons in the business community or your peers.

### **IV. GRATUITIES**

Never solicit or accept money, loans, credits or prejudicial discounts, gifts, entertainment, favors or services from your present or potential suppliers which might influence or appear to influence purchasing decisions.

Never solicit gratuities in any form for yourself or your employer. Items of nominal value offered by suppliers for public relations purposes are acceptable when the value of such items has been established by your employer and would not be perceived by the offeror, receiver or others as posing an ethical breach.

Gifts offered exceeding nominal value should be returned with an explanation or if perishable either returned or donated to a charity in the name of the supplier. In the case of any gift, care should be taken to evaluate the intent and perception of acceptance to ensure that it is legal, that it will not influence your buying decisions, and that it will not be perceived by your peers and others as unethical.

## **V. BUSINESS MEALS**

There are times when during the course of business it may be appropriate to conduct business during meals. In such instances, the meal should be for a specific business purpose.

Avoid frequent meals with the same supplier.

## **VI. CONFIDENTIAL INFORMATION**

Adhere to and protect the suppliers business and legal rights to confidentiality for trade secrets, and other proprietary information.

Develop a formal policy on the handling of confidential information.

## **VII. RELATIONSHIP WITH THE SUPPLIER**

Maintain and practice, to the highest degree possible, business ethics, professional courtesy and competence in all transactions.

Association with suppliers at lunches, dinners or business organization meetings is an acceptable professional practice enabling the buyer to establish better business relations provided that the buyer keeps free of obligation. Accordingly, it is strongly recommended that if a seller pays for an activity that the buyer reciprocate.

Purchase without prejudice, striving to obtain the maximum value for each dollar of expenditure

Preclude from showing favoritism or be influenced by suppliers through the acceptance of gifts, gratuities, loans or favors. Gifts of a nominal value that display the name of a firm which is intended for advertisement may or may not be accepted in accordance with the recipients own conscience or jurisdictional rules.

Refrain from publicly endorsing products.

## **VIII. RELATIONSHIP WITH THE EMPLOYER**

Remain free of any and all interests and activities, which are or could be detrimental or in conflict with the best interests of the employer. Refrain from engaging in activities where the buyer has a significant personal or indirect financial interest.

Exercise discretionary authority on behalf of the employer. Avoid acquiring interest or incurring obligations that could conflict with the interests of the employer.

## **IX. RELATIONSHIPS WITH OTHER AGENCIES AND ORGANIZATIONS**

A buyer shall not use his position to exert leverage on individuals or firms for the purpose of creating a benefit for agencies or organizations that he may represent.

All involvement and transactions shall be handled in a professional manner with the interest of the buyer's employer taking precedent.

## **X. RELATIONSHIP WITH PROFESSIONAL PURCHASING ORGANIZATIONS AND ASSOCIATIONS**

It is the obligation and the responsibility of the buyer, through affiliation with professional organization(s), to represent that organization(s) in a professional and ethical manner.

A buyer shall not use his position to persuade an individual or firm to provide a benefit to an organization.

**XI. POLICY**

It is the policy of NIGP that any member of the Institute who personally, or on behalf of his local chapter, is involved in the process of acquiring advertisers and/or exhibitors on behalf of the Institute, shall act only in the capacity of providing referrals of potential or interested parties to the Institute. As a result of such referral, should the Institute form a contractual obligation, appropriate credit shall be given to the individual or chapter.

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## PART II

### PROCUREMENT OF GOODS AND SERVICES UP TO \$2500

There is a \$2,500 limit for which departments may purchase goods and services without going through the Purchasing Division in advance (however, departments are encouraged to request assistance from the Purchasing Division for items under \$2,500). The \$2,500 limit pertains to each type, or category of item that is being purchased. For instance, a desk and matching credenza would be considered the same category; therefore, if the total is \$2,500 or more, the procedure for purchases \$2,500 or over would apply. It is each department's responsibility to make every effort to obtain the best price possible for any expenditure of public funds.

It may be possible to obtain smaller dollar items that are purchased continually throughout the year on a contractual basis with periodic deliveries of the items to occur as needed. Contact Purchasing Division if you have such a need that is not covered by an existing contract.

Departments are to purchase locally whenever possible. Out-of-state expenditures should be made only when local and in-state vendors have also been contacted, and the in-state vendors' prices are 5% or more higher than the out-of-state vendors' prices. When buying out of state, be aware that a **5% preference**<sup>1</sup> must be given to Wyoming resident suppliers unless federal funds are involved in the expenditure. The preference is applied by adding 5% to the out-of-state vendor's price for determining award only (the order shall not exceed amount quoted). **\*Note: If Federal monies are involved, there will be no in-state preference.** (See Preference For State Labor And Materials for more information)

Quality of product of service being equal, orders must be given to the vendor whose price is lowest (in-state preference considered). Needs should be anticipated far enough in advance that delivery time does not become an undue consideration in the procurement decision.

Wyoming contractors must be used for any project that does not require formal bids or is not formally bid unless federal funds are used. (Wyoming §15-1-113)

<sup>1</sup> Wyoming Statute §16-6-102, §16-6-104 through §16-6-107, §16-6-203 and §16-6-301.

## **PROCUREMENT FROM \$2,500 TO, BUT NOT INCLUDING \$35,000**

Purchases of goods and services less than \$35,000 do not require formally advertised bids; however, it is the policy of the City to require competitive price quotes for these expenditures, and formal bids may be advertised if to do so could be advantageous to the City.

When obtaining prices, the departments/divisions should request quotes from vendors. Identical information must be provided to each vendor from whom quotes are requested. The items requested must be clearly defined, or adequate specifications developed so the vendors will be giving price quotes for like items or services. To make quote comparison easier, product prices should be requested “FOB destination” so that shipping costs are included in the quoted prices.

A minimum of three vendors should be contacted for prices unless fewer are available that furnish the goods or services requested. All quotes that range from \$2,500 to \$4,999.99 require at least three verbal quotes. Use Form #1 in the Forms Section. All quotes received must be attached to the requisition or brought to the Purchasing Division after the requisition has been done. The Purchasing Division will not process the Purchase Order until the quotes have been received. The requisition must be reviewed and approved by the Purchasing Division before the order is placed.

Written documentation of all quotes obtained by the departments/divisions must be furnished to the Purchasing Division for all requisitions for expenditures for goods and services from \$5,000 to \$34,999.99 prior to placement of any order. The documentation must originate from the company by a letter, email, or Form #2 that is available in the Forms Section. The quote must have a signature, date, and date the quote expires. All quotes received must be attached to the requisition or brought to the Purchasing Division after the requisition has been done. The Purchasing Division will not process the Purchase Order until the quotes have been received.

The Purchasing Division may elect to obtain additional quotes from other sources if it determines that would be beneficial, or may verify the quotes already received. If the department wishes to have the Purchasing Division obtain the quotes initially, a complete description or specification for the item or project must be provided. If factors such as warranty, availability of parts and service, delivery time, and experience or qualifications of vendors will enter into selection, the vendors must be fully informed of this at the time quotes are requested. The order will be placed with the vendor or contractor whose price is lowest, all factors being equal.

A 5% in-state preference is given to Wyoming bidders (see Procurement of Goods and Services up to \$2,500 for more information regarding preferences). Wyoming contractors must be used for any project for which sealed bids are not formally advertised unless federal funds are used. (Wyoming § 15-1-113)

Under no circumstances are multiple or partial purchases to be made in order to circumvent the purchasing policy or any statutory bidding requirement. (Wyoming Statute §15-1-113).

## PREFERENCE FOR STATE LABOR AND MATERIALS

Pursuant to W.S. § 16-6-104, Wyoming made materials and products, and Wyoming suppliers of products and materials of equal quality and desirability shall have preference over materials or products produced or supplied outside the state and any contract let shall so provide. The preference created by W.S. § 16-6-104 shall be applied in a manner identical to the preference for resident contractors in W.S. § 16-6-102.

Pursuant to W.S. § 16-6-102, the contract shall be awarded to the responsible certified resident making the lowest responsive bid if the certified resident's bid is not more than five percent (5%) higher than that of the lowest responsible nonresident bidder

Pursuant to W.S. § 16-6-103, a successful resident bidder shall not subcontract more than thirty percent (30%) of the work covered by the contract to nonresident contractors

Pursuant to W.S. § 16-6-106, preference is hereby given to materials, supplies, agricultural products, equipment, machinery and provisions produced, manufactured or grown in Wyoming, or supplied by a resident of the state, quality being equal to articles offered by the competitors outside of the state.

Pursuant to W.S. § 16-6-107, the structure or structures to be constructed pursuant to this invitation to bidders shall be constructed and maintained by materials produced or manufactured in Wyoming if Wyoming materials are suitable and can be furnished in marketable quantities. Preference shall not be granted for materials of an inferior quality to those offered by competitors outside of the state, but a differential of not to exceed five percent (5%) may be allowed in cost of contracts less than five million dollars (\$5,000,000.00) for the Wyoming materials of equal quality as against materials from states having or enforcing a preference rule against "out-of-state" products.

Pursuant to W.S. § 16-6-203, the successful bidder shall employ only Wyoming laborers on the project and the contract to be awarded to the successful bidder shall contain a provision requiring that Wyoming labor be used except other laborers may be used when Wyoming laborers are not available for the employment from within the state or are not qualified to perform the work involved. In addition, the contract shall contain a provision requiring specific acknowledgement of the requirements of this section. The successful bidder may employ other than Wyoming laborers if:

- (i) The successful bidder informs the nearest state workforce center of his employment needs at least eleven (11) days before work is commenced; and
- (ii) The state workforce center certifies that the bidder's need for laborers cannot be filled from those Wyoming laborers listed with the Wyoming department of workforce services. The department shall respond to a bidder's request for certification within ten (10) days of the date the information is filed.
- (iii) The successful bidder shall also agree to promptly respond to requests from the Wyoming department of workforce services for the most recent construction schedule for the project.

## PROCUREMENT OF GOODS AND SERVICES \$35,000 AND OVER

(Refer to separate procedures for Used Vehicles and Used Equipment, Professional Services, and Construction and Labor Contracts.)

Expenditures of \$35,000 and over, and purchase or lease of new vehicles, regardless of cost, must be advertised and formally bid. Projects shall not be divided into smaller units for the purpose of avoiding these bidding requirements.<sup>1</sup>

The requesting department/division must submit plans, specifications, and/or detailed descriptions to the Purchasing Division. The Purchasing Division will prepare the bidding documents, place the newspaper ad, send notices or bids to prospective bidders, attend scheduled pre-bid meetings if necessary, issue any addenda, open and review bids with the department's/division's representatives and place the item on the Council Agenda for its consideration.

After award of a bid, a requisition shall be entered by the department/division and a purchase order processed by the Purchasing Division to order the goods, or services, unless a contract is involved.

If a contract is involved, the Purchasing Division will issue the Notice of Award, prepare the agreement, ensure that contracts are signed and that bonding and insurance are provided as called for in the contract documents and issue the Notice to Proceed and other documents as applicable. When the procurement involves construction, the responsible department/division will normally schedule a "pre-construction" meeting with the contractor, and must verify that the contractor and all subcontractors hold appropriate licenses. **No work may begin on a construction project until the Notice to Proceed is issued.** When progress payments are to be made, the department/division is responsible for entering the requisitions in accordance with the procedures for construction and labor contracts.

Upon satisfactory delivery of the item(s) or completion of the work, the department/division must notify the Purchasing Division. When applicable, the Purchasing Division will advertise the notice of final settlement, request final lien releases, etc., from the contractors and release any bonds or retained funds when all conditions of the bid or contract documents have been met.

<sup>1</sup> Wyoming Statute §15-1-113

## CONSTRUCTION AND LABOR CONTRACTS

Any construction or labor contracts that are not advertised for bids must be let to Wyoming resident contractors. The State of Wyoming Department of Workforce Services, certifies residency status for contractors.<sup>1</sup> A list of certified resident contractors is on file in the Purchasing Division. The list is updated by the State of Wyoming.

The department/division should ensure that any contractor that is hired holds the appropriate license(s) for the work being conducted, by contacting the City Building Division, Contractor Licensing.

Contracts for public improvements that are estimated to be \$35,000 or greater, including all related costs<sup>2</sup>, will be formally bid by the Purchasing Division to ensure compliance with all applicable laws including bonding and advertising. The department/division responsible for the project must submit detailed plans and specifications together with an estimate of the probable cost of the project to the Purchasing Division. The Purchasing Division will assist in preparation of specifications if necessary, advertise the bid and send notices to prospective bidders, attend pre-bid meeting as necessary, issue addenda as required, open and review the bids with the department/division, and place the item on the Council Agenda for consideration of award. Bids of certified Wyoming resident contractors are given a 5% preference over the bids of out-of-state firms unless federal funds are involved<sup>1</sup>. After award of the contract by the Governing Body, the Purchasing Division will issue the Notice of Award and other contract documents to the successful bidder, ensure that all required bonds and insurance certificates are received and obtain all necessary signatures. With concurrence of the department/division, the Purchasing Division will then issue the Notice to Proceed.

The contractor may submit billings for progress payments, usually on a monthly basis, for the work completed. If an architect or engineer is hired for construction management, the contractor will submit the pay requests to the architect/engineer for verification and approval. The architect/engineer then forwards the billing to the applicable department/division. The department/division will generate the requisition(s) to initiate the payment process. The pay request shall be submitted on the Contract Payment Request Form and Itemized Pay Request Form (Form #4a and #4b) or the AIA Documents G702 and G703, and must contain or be accompanied by, a certification by the engineer and/or designated City representative that the amount of work estimated to have been done conforms in all material respects with the requirements of the contract.<sup>2</sup>

If the original contract is for \$25,000 or more, an interest-bearing account will be opened for the 10% that is retained from each progress payment<sup>3</sup>; therefore, the department/division must enter two requisitions, one for the contractor itself, and one for the payment of retained funds to the contractor's designated depository. The Purchasing Division will advise the department of the name and address of the institution the contractor has chosen as the depository of these funds.

<sup>1</sup>. Wyoming Statute §16-6-101 through §16-6-104

<sup>2</sup>. Wyoming Statute §15-1-113

<sup>3</sup> Wyoming Statute §16-6-704

**SOLE/SINGLE SOURCE PURCHASE**

**Sole Source Purchase:** there is only one source, nationwide, for a certain piece of equipment or service. This is usually because of its technological, specialized, or unique character

**Single Source Purchase:** there is more than one source in the open market but only for reasons of function or service one vendor is recommended for consideration of the particular goods and/or services.

When requesting to purchase items in an amount of \$2,500 to \$34,999.99 that does not allow for a quote process due to only one (1) known source, a **Request for Sole Source Purchase or Single Source Purchase**, (Form #3) must be completed. If not sure about the item being a sole source purchase, contact the Purchasing Division for help.

To complete the **Request for Sole/Single Source Purchase**, the following must be completed:

Name:	Name of requesting individual.
Date:	Date request is made.
Department/Division:	Name of requesting department/division.
Item Description:	Be specific as to the content of the required purchase.
Reason for Sole/Single Source Purchase:	State the reason this is a sole source. Be explicit as to sole source or compatibility issue. <b>General statements which do not delineate the proprietary nature of the purchase ARE NOT SUFFICIENT.</b>

The department/division will also REQUIRE the vendor to provide a letter indicating that they are the sole/single supplier of the item being requested and this letter along with Form #3 must be given to the Purchasing Division or attach them to the requisition before purchasing the item(s). These sole/single source letters must be obtained on an annual basis, at a minimum.

Sole/single source purchases that are \$35,000.00 or over, must follow the steps listed above and also do the following:

- Must advertise twice in a local newspaper at least a week apart. (see example below).
- Must be approved by Governing Body. The department/division will need to fill out a “City Council Agenda Item Sheet” with a letter explaining why the item is a sole source, and deliver to Mayor’s office for placement on Council Agenda in accordance with policy.

**Example of advertisement:**

Request for Purchase over \$35,000

The City of Cheyenne requests to purchase "item" in the amount of \$ \_\_\_\_\_ for department/division from Company of City, State. This is a sole/single source purchase, therefore no bids were requested. This will be reviewed by Finance Committee on \_\_\_\_\_ and approved at City Council on \_\_\_\_\_. If you have any questions call \_\_\_\_\_ at 307/\_\_\_\_\_.

Name  
Title  
City of Cheyenne, WY

Published in: Wyoming Tribune Eagle  
Dates: (twice, at least a week apart)

## **EMERGENCY PROCUREMENT**

In the event of a sudden or unexpected emergency situation where it is imperative that immediate action be taken to prevent serious damage to health, welfare or safety of the public, the Mayor may authorize purchases of goods or services exceeding the prescribed limits of these Purchasing Procedures, provided that the emergency is present, immediate and existing, and not a condition which may or may not arise in the future or a condition which reasonably may be foreseen in time to advertise for bids; and that such emergency procurement be made with such competition as is practicable under the circumstances.

The Department Director(s) that are affected by the emergency must provide written determination of the basis for the emergency to the Mayor, and shall coordinate selection of vendor(s) or contractor(s) with the Purchasing Division. Failure on the part of a Department Director to have anticipated obvious conditions which would certainly jeopardize public health, welfare, or safety, or delaying to take action to meet conditions which were expected in advance to become such a threat that further delay caused by advertising for bids would entail public calamity, is not considered to be an emergency under this procedure.

Even though deemed an emergency, the policy for "Purchase of Used Vehicles, Used Equipment" shall be followed.

## **REPAIRS**

Requisitions for repairs should be generated using the vendor's estimated repair cost. If the estimated amount exceeds \$5,000, additional estimates should be requested from other qualified vendors, if available. Occasionally, repair costs cannot be accurately estimated. If the original estimate is less than \$5,000, but as the work progresses it is discovered that additional repairs are necessary, the Department/Division Director will determine whether or not to go ahead with the work. In no instance may any repair exceed \$35,000 without approval of the governing body.

For the purposes of this procedure, remodeling of buildings, street reconstruction and related improvements are considered public improvements, not repairs, and must be advertised for sealed bids, if the price exceeds \$35,000, in accordance with procedures for *Procurement of Goods and Services*.

## **PURCHASE OR LEASE OF NEW VEHICLES/EQUIPMENT**

The purchase or lease of any new vehicle and/or equipment shall be advertised for bid regardless of its cost. If trade-in vehicles/equipment are involved, these must be included in the bid advertisement.<sup>1</sup> The department/division requesting the new vehicle/equipment must supply Fleet Maintenance with a complete description of what they need and the block number of the vehicle/equipment that is being turned in. Fleet Maintenance will then coordinate with the Purchasing Division with the specification and any other information that is needed before the bids are advertised. Bids will be processed in accordance with the procedures for *Procurement of Goods and Services \$35,000 and Over*.

Also, see “Fleet Management Policy”

<sup>1</sup> Wyoming Statute §15-1-113 (a)

## **PURCHASE OF USED VEHICLES/EQUIPMENT**

(Also see procedure “Purchasing Goods, Equipment or Vehicles at Auction”)

Procurement of used vehicles and/or used equipment will be processed through the Purchasing Division prior to any commitment being made to a seller. The department requesting the used vehicle or equipment should determine its minimum requirements for the unit, and request a meeting with the Fleet Policy Planning Panel by contacting the Director of Public Works. The Purchasing Division will obtain bids or proposals after the Fleet Policy Planning Panel renders their decision. Final selection of a used vehicle or used equipment will be coordinated with the Purchasing Division, Fleet Maintenance, the Mayor, and the user department/division, and will be based on the best value for the price. Selection will be made only from vehicles or equipment meeting or exceeding the minimum requirements set forth by the department/division. If the amount exceeds \$35,000 the expenditure must be approved by the Governing Body. The department shall fill out a “City Council Agenda Item Sheet” for the item, and submit it along with appropriate documentation (memo explaining need, price comparisons, etc.) to the Mayor’s office for placement on the Council Agenda in accordance with policy.

In order to comply with the requirements of Wyoming Statutes §15-1-112 and §15-1-113 departments desiring to dispose of a used vehicle valued at \$500 or more cannot use it as a trade-in on the purchase of another used vehicle. If not traded on a new vehicle, it must be advertised for sale by sealed bids or sold at public auction.

Refer to the procedure for disposal of surplus property for additional information.

Wyoming Statute: §15-1-112, and §15-1-113

## **PURCHASING GOODS, EQUIPMENT OR VEHICLES AT AUCTION**

(Also refer to procedure “Purchasing of Used Vehicles, Used Equipment”)

If used equipment or a used vehicle that is needed by a department/division becomes available at an auction, the department/division should carefully preview the item with mechanics or other Fleet Maintenance personnel. The bid given for the item cannot exceed \$35,000 unless the department/division obtained prior approval of the Governing Body for the purchase of the item.

Before bidding on the item, the department/division must have verified with the auctioneer that a City purchase order will be accepted, and should explain the City’s payment procedure to the auctioneer.

If the auctioneer requires a purchase order prior to the auction, the department/division should enter a requisition that contains a general description of the item or items that will be bid upon, and states the amount that the department/division will not exceed for each item. A purchase order will be issued for the department/division representative to take to the auction, or to give to the auctioneer prior to the auction, according to arrangements made with the auctioneer. Because terms of sale may vary among auctioneers, arrangements should be coordinated with the Purchasing Division prior to the date of the sale. The department/division should match sale receipts to the purchase order and note any price or item adjustments (these adjustments may require that the Purchasing Division do a “change order”). The department/division signature for approval of payment should then be placed in the appropriate space on the “invoice/receipt”, and it should be forwarded immediately to Accounts Payable to expedite payment.

## **PRINTING AND FORMS**

Orders for Printing and Forms should follow procurement procedures in accordance with expenditure limits. Because explicit specifications are normally necessary to obtain accurate price quotes for printing jobs, departments/divisions are encouraged to contact the Purchasing Division for assistance in developing specifications and for requesting prices. Be advised that state law mandates that Wyoming printers be given a 10% preference if 75% or more of the work will be done in the state.<sup>1</sup> The preference is applied by adding 10% to the quotes or bids of firms doing less than 75% of the work in Wyoming.

If the department/division wishes the Purchasing Division to assist in formulating the printing job description (specification), or if the probable cost is \$5,000 or more, it should submit a memo to the Purchasing Division stating the quantity required along with a sample of the form, brochure, etc. Be sure to indicate any revisions that are needed. If the form or other printing is new, submit a "draft" sample or description that depicts size, copy, number of parts or pages, type of paper, ink color, and any other features, such as binding.

<sup>1</sup>Wyoming Statute §16-6-301

## **BUSINESS CARDS AND LETTERHEAD STATIONERY**

Business card orders will be processed through the Purchasing Division. All cards will follow the standard format shown below unless a particular department has been exempted by the Mayor on the basis of specific departmental function that requires a unique logo.

Please submit requests for these business cards on a paper requisition that includes the quantity, budget information, and approver signature, with a sample to be imprinted. The Treasurer's Department will enter the requisition and submit the orders to the printer. \*Delivery will be approximately two (2) weeks thereafter.

### Standard Format:

Name  
Title  
Address Including Room #.  
City, State, Zip  
Phone  
Fax  
Email  
(City website if wanted)

Contact the Purchasing Division for current prices.

\*If fewer than four orders of either 250 or 500 cards are received in the Treasurer's Department by the cutoff date, the ordering departments/divisions will be contacted to see whether they want to order at a higher rate, or wait to combine their order with other departments/divisions at a lower rate.

Any business card order processed directly through a printer will be the responsibility of the ordering individual and will not be paid by City funds unless the order is for cards with a different format that has been approved by the Mayor.

City letterhead stationery and envelopes with the official logo are available in the Purchasing Division

## UNIFORMS, SPECIAL WORK CLOTHING, AND STEEL-TOE FOOTWEAR POLICY

### **Uniforms:**

Procurement of annual uniform requirements for uniformed employees will be in accordance with established purchasing procedures relative to the anticipated dollar amounts. Responsibility for furnishing uniforms is determined by the respective employee agreements.

### **Special Work Clothing:**

Non-uniformed employees whose job requirements or for whom City work policy requires the wearing of special work clothing or other safety-related apparel may be entitled to certain City-furnished clothing where work clothing allowances have been budgeted. The types of work clothing allowed under this policy include foul-weather gear for employees required to work outdoors in inclement weather. The first year an employee is hired, they are allowed to pick between a coat/jacket or coveralls. The next year, the employee is allowed the other item they didn't choose the first year. Replacements of these items are at the discretion of the Division Directors, and may not be replaced every year. The employee will have to take their article of clothing into the division directors and explain why a new one is needed. The Division Director will decide if the article of clothing needs to be replaced right away or not. Some items may be sent to the cleaners instead of replacing them. Safety vests; work gloves, and hard hats will be provided for employees whose job requires them. City-furnished clothing shall be worn by the employee for work-related activities only.

City logos placed on clothing, require prior approval from the Mayor before purchase. The Purchasing Division will then need a memo stating the approval from the Mayor. Any item with the City logos must be returned upon leaving the City. Last paycheck may be withheld until the return of all city clothing with logos. Clothing purchased for volunteers, must be marked with "volunteer" or they will have to be returned.

Generally, the types of clothing found in an employee's normal wardrobe are not considered special work clothing and will not be approved. These include but are not limited to the following: shirts and t-shirts, socks, hats, baseball caps, jeans, slacks, long underwear, and shoes.

### **Steel-toe Footwear:**

Budgets permitting, employees who for safety reasons are required to wear steel-toe shoes or boots on the job may be allowed up to **\$150.00 in each fiscal year**, at the Department Director discretion based on need, for steel-toe footwear. City-furnished footwear shall be worn by the employee for work-related activities only. If you are allowed to purchase a pair of safety boots, you must present proof of the ASTM safety compliance with rating of F2413-11 along with the receipt to your Division Director. If footwear is damaged or becomes unusable due to job related wear and tear, the City may replace the damaged footwear at the discretion and written approval of the Division Director. Employees shall be responsible to replace, at their own expense, if the footwear becomes lost, or damaged due to negligence or improper use.

**CLOTHING & FOOTWEAR AGREEMENT**

New employees on a Probation Period will have to reimburse the City for all clothing and footwear purchased by the City if terminated or resigns while on probation. All other employees who resign or are terminated within ninety (90) days of the purchase of clothing or footwear provided by the City, agrees to reimburse the City for the cost of all items purchased within the 90 day period. Final paychecks will be withheld until payment has been received. This agreement may be found in the forms section.

I have read and understand and agree to the procedures and terms of the City of Cheyenne Uniforms, Special Work Clothing and Steel-Toe Footwear policy. If you do not agree to these terms, the employee will be required to purchase their own work clothing and footwear as required to do their job or will be terminated.

\_\_\_\_\_  
Name of Employee

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

This form must be signed every year by the employee, before given permission to purchase any items.

**NOTE: This form must be turned in with the invoice before the invoice is paid.**

**MISCELLANEOUS PURCHASES**

- Break Room items that may be purchased with City funds are: coffee, tea, sugar, creamer, water, and cups, if being used for meetings. Flavored coffees, coffee extracts, hot chocolate, cider, etc. **shall not** be purchased with City funds. Commercial bottled water service such as, Culligan or Deep Rock, shall be allowed if water is available to the public.
- Decorations for main offices such as framed artwork, can be purchased with City funds as long as the item is used in an open area where the whole public can see. Any individual offices with doors, cannot buy these types of items. Holiday decorations are allowed for lobby areas. Individual offices are not to be purchase holiday decorations under any circumstances.
- Promotional items with City logos such as pens, pencils, bracelets, t-shirts, water bottles, etc., will not be allowed unless the Mayors approval is obtained.
- Parties: Party supplies or gifts for City employees shall not be purchased with City funds.
- First Aid Supplies: The City shall provide the following supplies at maximum: No “oral” medication is to be purchased.

○ Absorbent Compress	○ Burn Treatment
○ Adhesive Tape	○ CPR Barrier
○ Antiseptic Swabs	○ Cold Packs
○ Antiseptic Towelettes	○ Eye Covering, with means of attachment
○ Adhesive Bandages	○ Eye Wash
○ Antibiotic Treatment	○ Eye Wash & Covering, with means of attachment
○ Antiseptic Wipes	○ Gloves
○ Bandage Compress (2’)	○ Roller Bandages (4’)
○ Bandage Compress (3’)	○ Roller Bandages (2’)
○ Bandage Compress (4’)	○ Sterile Pads
○ Wound Dressing	○ Triangular Bandages

- Appliance for office use: No appliances may be purchased without approval from Department Director.

## **PROCUREMENT OF PUBLIC ART**

Sculpture and other public art will be purchased using the following guidelines. These guidelines do not prohibit the solicitation of formal Requests for Proposals (RFP'S) for any art project, if the Art in Public Places Committee (AIPP) or the Governing Body of the City wishes.

The City of Cheyenne Art in Public Places Committee (AIPP) which consists of nine members of the community will consider proposals and make recommendation to the Governing Body on a continuing basis for sculpture or other art to be placed in various public locations owned by the City of Cheyenne. Artists are invited to submit proposals for their work for consideration throughout the year to the AIPP Committee. The Committee meets quarterly by ordinance, as long as budget funds are available, and may have special meetings during the year, at which times proposals may be reviewed.

The Committee will consider pieces for placement in various parks and other public areas of the City. The artist should have a definite subject corresponding to a specific location in mind when submitting a proposal. A maximum of twelve 35mm slides or digital pictures, showing recent work, a slide script, résumé, and graphic depiction (slides, photos, sketch, description no larger than 8½" x 14") of the proposed piece may be submitted. Proposals intended for consideration by the Art in Public Places Committee should be submitted to: The City of Cheyenne Purchasing Division, Room 104, 2101 O'Neil Avenue, Cheyenne, WY 82001.

The AIPP Committee and other City entities or departments/divisions may also consider pieces from collections, galleries, studios, or exhibits, or may request formal RFP's for specific projects. All public art selected by the AIPP committee or City departments/divisions is subject to final approval by the Governing Body of the City of Cheyenne. Proposals submitted in response to formal RFP's should be submitted to the City department that will be designated in the RFP.

Proposals will be kept on file at the City for a period not to exceed six (6) months unless earlier return of the materials is requested by the artist. Proposals of artists whose work is selected will not be returned. All proposals received will be considered public information by the City of Cheyenne. Any information considered by the artist to be privileged or confidential should not be revealed in the proposal.

## **PART III**

### **PROFESSIONAL SERVICES**

For the purposes of this Purchasing Policy Manual, the phrase "Professional Services" is defined as follows: services rendered by members of a recognized profession or by persons possessing special skills or expertise. Professional Services include the provision of information, advice, training, or assistance. As typical examples, professional services agreements are used to purchase the services of licensed professionals or other experts in the form of studies, reports, memoranda, designs, templates, information technology programming, and other like or similar matters. Professional services agreements are also used to purchase the services of professionals and other experts in the form of presentations, seminars, legal representation, and other like or similar functions. Professional services agreements are also used to purchase the services of professionals and other experts in the form of administration or management services, such as construction contract administration services.

Professional Services agreements are typically used to procure the services of accountants, auditors, actuaries, appraisers, architects, attorneys, business consultants, business development managers, copywriters, engineers, public relations professionals, recruiters, researchers, real estate agents and brokers, translators and medical service providers.

The Professional Services policies contained in this Manual may not be used to procure construction services in the form of labor or materials to construct or maintain streets, alleys, sidewalks, bridges, water mains, sewer mains, drainage facilities, or other public buildings or infrastructure. These Professional Services policies may not be used to purchase moveable equipment, components, or fixtures even if such items are being purchased by the City pursuant to a sales and installation contract.

Professional Services agreements may not be treated as "sole source" contracts.

**PROFESSIONAL SERVICES OF**  
**ARCHITECTS, ENGINEERS AND LAND SURVEYORS**  
**FOR THE CITY OF CHEYENNE**

1. **GENERALLY**

- a. Although Wyoming Statute §15-1-113(a) specifically exempts contracts for professional services from bidding requirements, the City has determined that it should adopt a formal procedure for the selection of these services.

Note: Contracts for less than \$35,000 do not require proposals; however, contracts between \$5,000 and \$35,000 should be awarded based upon selection of a qualified firm by a three (3) person committee. Firms for consideration should be selected from SOQ's (Statements of Qualification) on file in the office of the City Engineer. No contract which has been awarded for less than \$35,000 may be modified to increase the amount to \$35,000 or greater unless the provisions of this procedure were followed in the initial selection and approval of the Governing Body was obtained.

- b. The services addressed in this procedure apply to contracts with architects, engineers and land surveyors which total \$35,000 or more.
- c. Wyoming Statute §9-2-1027 through §9-2-1033 pertains to State of Wyoming agencies and is known as the "Professional Architectural, Engineering and Land Surveying Services Procurement Act" (the Act). The City has adapted §9-2-1030 through §9-2-1032 of the Act for inclusion in its procedure governing procurement of these services.
  - i. The City will advertise the RFP two (2) times in a local newspaper. (see example of advertisement on page III.6)
  - ii. The City will consider all interested consultants qualified to provide the required professional services.

2. **PRE-PROPOSAL PROCEDURES**

- a. List of qualified professionals to be developed.
  - i. The City Engineer will develop and maintain lists of qualified architects, engineers and land surveyors for selection under this procedure. The consultants shall be required to submit detailed Statements of Qualifications (SOQ) and performance data, and any other information required by the City. A modified form SF254 will be used for this purpose. The City Engineer's Office will provide copies upon request and are also available on-line at [www.cheyennecity.org](http://www.cheyennecity.org).
  - ii. The completed forms will be kept on file in the office of the City Engineer and must be updated by the consultants every two (2) years, or more often if conditions in the status of the firm have changed.

b. RFP Format

The City Engineer will develop an RFP format as a guideline for departments/divisions to use with the requests for proposals. The form may be revised from time to time, or modified for specific projects as necessary. The City Engineer will develop standard rating/weight forms to be used in the selection process.

c. Scope of Work to be developed by Department/Division

The department/division procuring professional services should develop the scope of work within the standard format, according to its needs. The Purchasing Division will provide the RFP number. The RFP will be reviewed by the City Engineer, the Purchasing Division, Attorney, and Risk Manager. The Risk Manager will determine the type and extent of general and professional liability insurance coverage, if any, that should be considered for the project.

d. Coordination with City Departments/Divisions

The department/division will coordinate its requirements with the City Engineer who will assist the department/division in determining the qualifications required of a consultant for the specific project. The City Engineer and the department/division will review the SOQ forms submitted and develop a list of consultants suited to the requirements of the project.

e. Contents of RFP

- i. The RFP shall state all the evaluation factors that will be used. The Standard Rating/Weight Form shall be included in all RFP documents and will show the weighted values assigned to the evaluation criteria for the project. There should be no deviation from the established criteria in evaluating proposals.
- ii. The RFP should describe the entire project giving a complete description of the contemplated work, and include the proposed construction budget. It should state whether proposals will address engineering design only, or whether construction engineering (construction management) will also be included. If construction engineering is included, costs should be requested with the initial proposal if feasible. If negotiated after the design phase is complete, the construction engineering may only be added to the contract with the original consultant as a contract modification in accordance with Section V Paragraph f, **CONTRACT PROCEDURE.**
- iii. All proposals received will be considered public information by the City of Cheyenne. The RFP should advise consultants that any information considered by them to be trade secrets privileged or confidential data should not be revealed in the proposal. Contents of proposals received and completed rating sheets will be made available upon request after the selection process has been completed

and the contract has been awarded. A copy of the proposal of the firm awarded the contract will be kept on file with the project records of the department/division. In accordance with the City's Records Retention Schedule, one copy of all other proposals and any audio tape made at pre-proposal or other meetings will be kept for two (2) years and then will be recycled (financial information will be shredded). Extra copies of proposals will be shredded/recycled or returned to proposers at their request.

### 3. **NOTICE**

- a. The department/division will publish an advertisement in a local newspaper (see example on page III.6) notifying prospective consultants that proposals are being requested. The advertisement should be published two (2) times, at least a week apart. Except under unusual circumstances, the second ad should appear not less than two weeks before the RFP closing date. Three or more weeks notice is recommended whenever possible to give consultants sufficient time to prepare proposals.
- b. The publication should include a general description of the project, the date, time and place proposal will be due, and where interested consultants can obtain the RFP documents.
- c. The department/division may notify architects, engineers and land surveyors of records who have submitted current SOQ's and performance data, and whose names therefore appear on the qualified consultant list created for the project, that proposals are being requested. This can be accomplished by sending them a letter, a copy of the newspaper advertisement, or through email. The department/division will then provide the RFP documents upon request. An electronic copy shall be sent to the Purchasing Division for placement on the website.
- d. Information given to any consultant must be available to all. Discussion with consultants about the project prior to proposal deadline should take place in an open "pre-proposal" meeting. If a decision to have a meeting is made after the RFP is issued, notice of the meeting should be provided to all consultants with RFP documents. The meeting should be scheduled with sufficient time before proposals are due to allow all interested consultants to formulate questions or comments to be presented at the meeting.

#### **Pre-Proposal Conference Remarks:**

##### Opening

- Welcome – thank you for coming – introductions – route sign-in sheet.
- Restate proposal opening date and time – late proposals not accepted
- Number of copies required; one clearly marked as original
- Signature requirements – Affidavit, proposal page
- Remind to review insurance requirements
- Addendum procedure – the need to acknowledge with their proposal
- Open for questions and answers – may go through solicitation page-by-page, section-by-section, or open for questions, whichever appropriate.

### Conclusion

- Thank you for coming
- Indicate whether or not an addendum will be issued
- Point of contact for questions is \_\_\_\_\_ – note deadline for any additional questions is (date and time).
- Restate the due date and time – no late bids will be accepted. Get proposals in well ahead of the due date and time.

### **4. Addendums**

- a. After the pre-proposal meeting, or if there were any questions prior to the pre-proposal meeting, an addendum will need to be sent out to all interested parties. An addendum must be out at least one (1) week before the proposals are due.

Example of Newspaper Ad:

RFP-X-XX (number requested from the Purchasing Division)

The City of Cheyenne is requesting proposals for name of project (RFP).

Proposals must be submitted in writing no later than time on date to the City of Cheyenne \_\_\_\_\_, Room \_\_\_\_\_, address, Cheyenne, WY. Upon request, the RFP documents are available from the \_\_\_\_\_ Department by calling 307/\_\_\_\_\_, or by requesting them online at [www.cheyennecity.org](http://www.cheyennecity.org).

There will be a pre-submittal meeting on this project date of meeting at time location of pre-submittal meeting, Cheyenne, WY.

The Provisions of Wyoming Statute §15-1-113 are by reference made a part of the bidding documents.

The City of Cheyenne reserves the right to reject any and all proposals, and to waive any formality or technicality in the Proposals in the interest of the City.

Name of Contact,  
Title

Publication: Wyoming Tribune-Eagle  
Dates: At least two (2) times, a week apart.

## 5. **SELECTION PROCEDURES**

- a. Proposals shall be received in the Purchasing Divisions office.
- b. All proposals received by the advertised deadline shall be considered.
- c. Criteria shall include: the ability of professional personnel, financial stability, past performance, willingness to meet time requirements, location, current and projected workloads. Other criteria pertinent to the project may also be included.
- d. The department/division is responsible for designating the selection committee to review proposals and for distributing the proposals to the committee participants. The City Engineer, or designee, shall be invited to participate on all selection committees. Each member of the committee should complete a weighted rating form for each respondent. Anyone on the committee who has not reviewed all proposals and completed a rating form for each proposer cannot participate in the selection.
- e. The committee will select one or more qualified firms for interviews. The number selected will be based upon the complexity of the project and the qualifications of consultants, and the interviews will include discussion of each firm's projections of

project costs, qualifications, approaches to the project, ability to furnish required professional services, use of alternative methods for furnishing required professional services based on the City's description of the work. If unsatisfied with the results of the interviews, the City may select additional firms for interviews.

- f. In conducting discussions with a consultant, committee members may not discuss information derived from proposals submitted by competing consultants.

## **6. CONTRACT PROCEDURE**

- a. After the selection committee has reviewed proposals and interviewed consultants in accordance with the preceding procedure, the City Engineer and department/division will negotiate a written contract with the selected firm. Estimated value, scope, complexity and professional nature of the services to be rendered will be considered when determining reasonable compensation.
- b. If the City is unable to negotiate a satisfactory contract with the selected firm at a price determined fair and reasonable, negotiations with that firm will be terminated. Negotiations will then begin with the second ranked firm. If the City fails to negotiate a satisfactory contract with the second firm, negotiations with that firm will be terminated and negotiations with the third ranked firm shall begin, and so on, until a satisfactory contract is reached. If the City fails to negotiate a satisfactory contract with any of the qualified firms submitting proposals, the possible causes should be reviewed and negotiations resumed beginning with the highest ranked firm.
- c. Each contract for professional services shall contain a prohibition against gratuities, kickbacks and contingent fees. The architect, registered land surveyor or professional engineer shall certify under oath that he/she has not in any way been involved in any gratuities, kickbacks, or contingent fees in connection with his selection or ultimate performance of the contract.
- d. Each contract for professional services entered into by the City shall contain a prohibition against payment based upon a percentage of the construction cost.
- e. Each contract must be approved by the City Risk Manager and by the City Attorney prior to execution. Contracts exceeding thirty five thousand dollars (\$35,000.00) require Governing Body approval. The department shall fill out a "City Council Agenda Item Sheet" for the contract, and submit it along with appropriate documentation to the Mayor's office for placement on the Council Agenda in accordance with policy.
- f. Additional services needed for a specific or ongoing project may be negotiated and added to the contract with the original consultant only by contract modification approved by the Governing Body. New proposals may be requested if the Governing Body or the City Engineer and department/division deem it to be appropriate and in the City's best interest.

**PROFESSIONAL SERVICES OF**  
**ACCOUNTING, FINANCIAL, LEGAL, PLANNING, MANAGEMENT,**  
**INFORMATION TECHNOLOGY CONSULTANTS AND**  
**PROFESSIONALS AND EXPERTS OTHER THAN ARCHITECTS,**  
**ENGINEERS, AND SURVEYORS**

Professional services addressed herein include but are not limited to services customarily rendered by attorneys, certified public accountants, financial personnel, systems development, consultants, and planning and management consultants. Only those professional services contracts which will exceed \$35,000 require an RFP.

Note: Procurement of public art is addressed in a separate procedure titled *Procurement Procedure for Purchase of Public Art*.

Services provided by architects, engineers and land surveyors are addressed in a separate procedure titled *Procurement of Professional Services of Architects, Engineers and Land Surveyors for the City of Cheyenne*.

**Legal and health-related services do not require RFP's.**

Although Wyoming Statute §15-1-113(a) exempts contracts for professional services from the requirement to advertise for bids, it is the policy of the City to advertise and to request proposals from an adequate number of sources to permit reasonable competition consistent with the nature and requirements of the procurement.

All proposals received will be considered public information by the City of Cheyenne. The RFP should advise consultants that any information considered by them to be trade secrets privileged or confidential data should not be revealed in the proposal. Contents of proposals received and completed rating sheets will be made available upon request after the selection process has been completed and the contract has been awarded. A copy of the proposal of the firm awarded the contract will be kept on file with the project records of the department/division. In accordance with the City's Records Retention Schedule, one (1) copy of all other proposals and any audio tape made at pre-proposal or other meetings will be kept for two (2) years and then will be recycled (financial information will be shredded). Extra copies of proposals will be shredded/recycled or returned to proposers at their request. The department/division should develop the RFP according to its needs and have the RFP reviewed by the Purchasing Division, City Attorney, and Risk Manager. The Risk Manager will determine the type and extent of general and professional liability insurance coverage, if any, that should be considered. The Purchasing Division will assign an RFP number, and if requested by the department, will assist in preparation of the RFP and a notice to be published in the local newspaper.

RFP documents should be sent to persons or firms who have indicated an interest in providing the kinds of services requested. Proposals may be received in the office issuing the RFP or in the Purchasing Division, at the option of the department/division. A copy of the RFP and list of persons or firms receiving proposal documents should be furnished to the Purchasing Division. The department/division is responsible for the designation of the evaluation committee to review proposals and for distribution of the proposal to the committee participants.

The committee will select one (1) or more qualified firms for interviews. The number selected will be based upon the complexity of the project and the qualifications of consultants, and the interviews will include discussion of each firm's projections of project costs, qualifications, approaches to the project, ability to furnish required professional services, use of alternative methods for furnishing required professional services based on the City's description of the work. If unsatisfied with the results of the interviews, the City may select additional firms for interviews.

The RFP shall state all the evaluation factors that will be used, including costs for the services. There should be no deviation from the established criteria in evaluating proposals. All eligible respondents must receive impartial and equitable consideration. It is the objective of the City to award the contract to the respondent most likely to perform in a manner most advantageous to the City, all factors considered.

After the selection committee has reviewed proposals and interviewed consultants in accordance with the preceding procedure, the department/division will negotiate a written contract with the selected firm. Estimated value, scope, complexity and professional nature of the services to be rendered will be considered when determining reasonable compensation.

Each contract must be approved by the City Risk Manager and by the City Attorney prior to execution. Contracts exceeding thirty five thousand dollars (\$35,000) require Governing Body approval. The department shall fill out a "City Council Agenda Item Sheet" for the contract, and submit it along with appropriate documentation to the Mayor's office for placement on the Council Agenda in accordance with policy.

Proposals no longer under consideration should be separated and the person(s) or firm(s) notified without delay. If respondents inquire as to why their proposal was not accepted, the department may go over areas of the proposal that may have been inadequate or could be improved in future proposals, and may also address areas that were noteworthy; however the contents of competing proposals shall not be discussed.

## **FEDERAL VENDOR PROTEST PROCEDURES**

(This is for federal contracts only)

Protests regarding pre-bid (before bids or proposals are due) or pre-award (after bids or proposals are opened but before governing body approval) phases of the procurement process must be filed in writing with the City Purchasing Director. Pre-bid protests must be filed at least five (5) working days prior to the date and time specified for receipt of bids or proposals. Pre-award protests must be filed no later than forty-eight (48) hours, excluding Saturdays, Sunday and legal holiday, after the date and time of the bid or proposal opening.

The protest must include the name and address of the protestor, and must be signed and dated. It must identify the bid or project and contain an explicit statement of all grounds claimed for the protest along with any supporting documentation. The City Purchasing Director, the City Attorney, and any affected City Department Directors, or their designees, will conduct an informal hearing with the protestor within five (5) working days after receipt of the written protest. The purpose of the hearing will be to review the basis of the protest, evaluate the facts and merits of the protest, and make a preliminary determination in the matter. If the protest is found to have merit, the City will take immediate steps to remedy the situation. If the protest is found to lack merit, the protestor will be informed in writing within ten (10) business days. A recommendation for award will be made to the Governing Body by City staff. The protestor will be advised of the dates and times the bid or proposal will appear on the agenda of the Finance Committee and City Council, and that it may bring its protest to the Governing Body with award of the item being considered. Except as otherwise provided by law, the decision of the Governing Body is final.

When Federal Transit Administration (FTA) funds are involved in the procurement, the FTA will be notified of the protest pursuant to FTA Circular C 4220.1D. The protestor may file a protest with the FTA after all administrative remedies with the grantee have been exhausted. Reviews of protests by FTA will be limited to a grantee's failure to have or follow its protest procedures, or its failure to review a complaint of protest. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five(5) working days of the date the protestor knew or should have know of the violation.

**PART IV**

***CITY OF CHEYENNE***

**FLEET MANAGEMENT  
POLICY**

**January 1, 2013**

## **CITY OF CHEYENNE FLEET MANAGEMENT POLICY**

### **I: PURPOSE, MISSION STATEMENT, AND OBJECTIVES**

The Fleet Maintenance Division administers the City of Cheyenne's programs for vehicle and equipment purchase, maintenance, and repair. This proposal adds responsibility for a vehicle and equipment replacement program, and for establishing vehicle operating budgets. Satisfying these responsibilities will require evaluation and determination of equipment replacement, preparation of specifications (to insure acquisition of effective equipment), and asset management of all equipment from purchase through disposal.

A Fleet Planning Panel shall be formed consisting of the Public Works Director (or Designee), the Fleet Maintenance Director, and representatives from the Police, Fire and Rescue, Parks and Recreation, Engineering, Purchasing, and Planning Departments. The Panel will be chaired by the Public Works Director or Designee and shall meet semi-annually (unless convened for a special meeting). The Panel will review vehicle replacement plans, funding, requests for upgrades or additions to the fleet, underutilization, and proposed deviations from or changes to this plan.

Fleet Planning Panel Mission Statement: Develop policy and guidance for management and replacement of the City's Vehicle and Equipment fleet.

Objectives and tasks:

- Focus attention on the need to fund vehicle and equipment replacement.
- Develop a vehicle and equipment replacement plan.
- Review and approve/disapprove requests for deviation from established vehicle and equipment management policy.
- Develop a funding mechanism for fleet replacement.

### **II: VEHICLE IDENTIFICATION**

*All units operated by the City of Cheyenne will comply with local, state and federal laws, regulations, and ordinances prescribing the identification of City Fleet units. The Fleet Maintenance Division will ensure all units, for which they have asset management responsibility, have required identification markings. Markings will include: appropriate "block" number, city decal and license plate and any other markings deemed appropriate for the type and use of the vehicle or equipment. Exceptions to this policy may be authorized for certain "under cover" Police or Fire vehicles or other vehicles or equipment as recommended by the appropriate Department head and approved by the Public Works Director or the Mayor.*

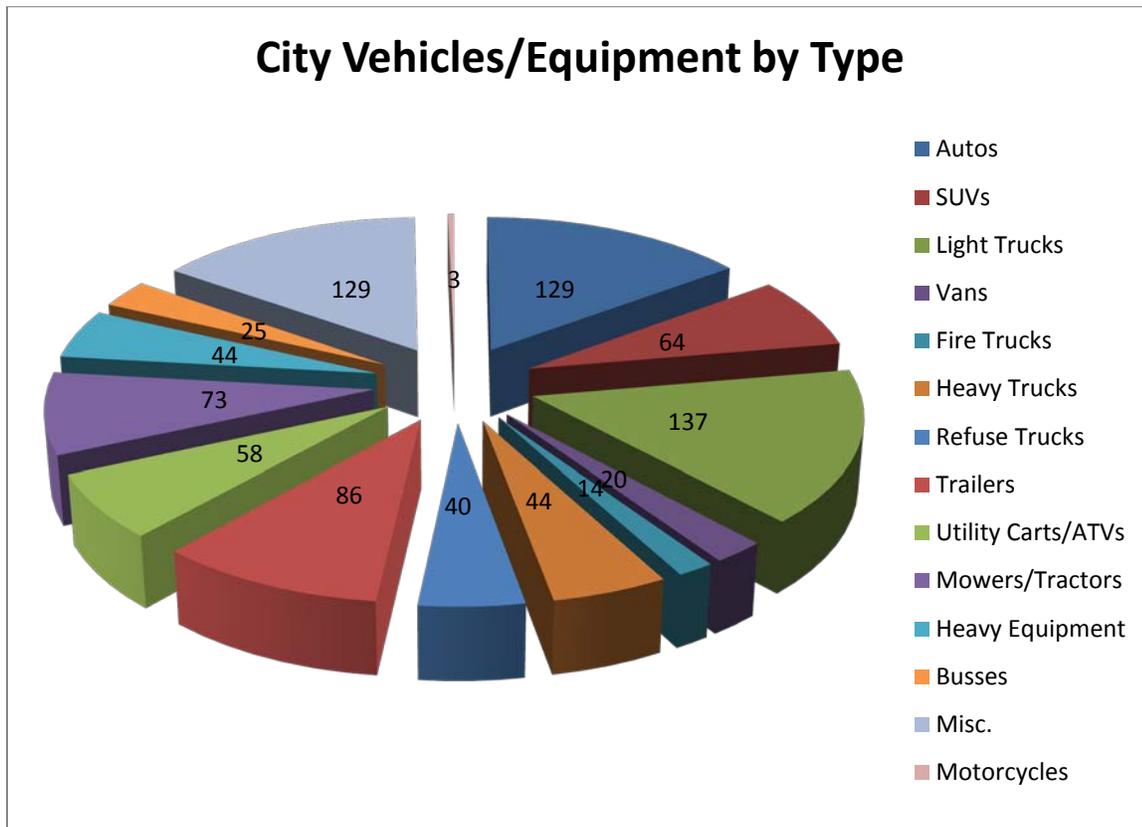
### **III: BACKGROUND**

As of January 2013, the City owned and maintained over 866 vehicles and pieces of equipment (does not include automated containers, dumpsters, or roll off containers). The original purchase cost of the city's fleet was approximately \$24M. The FY 2014 replacement cost (i.e. the cost the city would have to pay in 2014 dollars to replace every vehicle and piece of equipment in the fleet) is \$36M. A city-wide vehicle and equipment plan created in 2009 and updated in January 2013 shows that it would take

approximately \$18M to replace all vehicles and equipment which have exceeded the recommended service life. Thereafter, it would take between \$3M to \$8M a year to maintain vehicles and equipment at desired service life levels. Although current funding does not allow it, a reasonable goal for the City would be replacement of approximately 8-10% of its fleet per year.

Currently, a portion of the Optional One Percent Sales Tax is used to replace Fire and Rescue, Police, Street and Alley, Traffic, and Parks vehicles and equipment. In addition, a vehicle/equipment lease program is used to keep the Solid Waste Fleet up to date. However, other than a small amount of the Optional One Percent Sales Tax designated for the Mayor’s distribution to the other Departments, there is no fund designated specifically for vehicle and equipment replacement.

The size and complexity of the city’s fleet is very diverse as can be seen in the chart below.

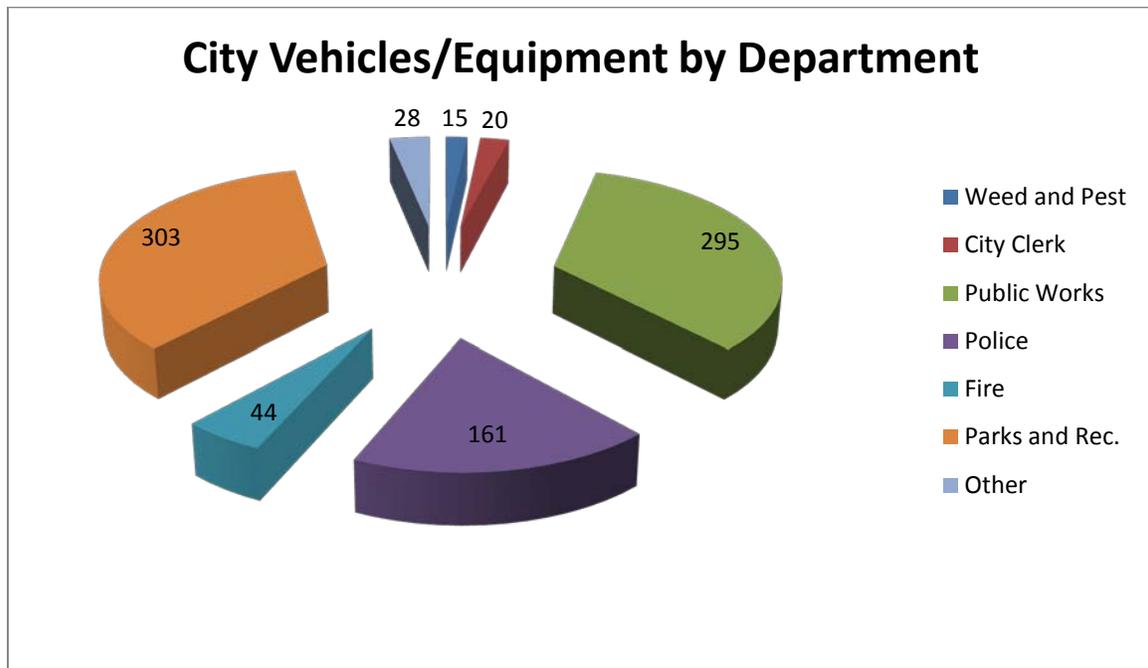


Because of this diversity, it takes a team of skilled technicians to respond, diagnose, and repair vehicles and equipment in an efficient and timely manner. It is the goal of the Fleet Maintenance Division to keep a fleet availability rate of 95%. The primary factor that tends to limit vehicle availability is unscheduled repairs. Although unscheduled

repairs are often unavoidable, scheduled repairs can tend to increase the overall fleet availability due to the ability to schedule parts and technicians, as well as the ability to complete the repair/service during normal vehicle down time periods.

With unscheduled repairs, priority is given to the vehicle that has the greatest impact to citizens health, safety and welfare. This priority is established by the Fleet Maintenance Director within general guidelines for priority established by the Public Works Director.

The following graph shows the distribution of vehicles assigned to each Department.



#### **IV: OPERATOR MAINTENANCE AND DAILY CHECKS**

Each Department will establish a process to ensure operators perform routine operations checks of fluid levels, safety equipment, and vehicle operation (lights, brakes, mirrors, etc.) These checks will be performed at least weekly for light duty vehicles (i.e. cars and pickups). All heavy equipment and large trucks will require these checks on a daily basis. Vehicle/Equipment discrepancies will be documented and reported to Fleet Maintenance. Operators will take vehicles to Fleet Maintenance shops for periodic maintenance when advised by Fleet Maintenance. If the operator/division believes periodic maintenance is too frequent or not frequent enough, based on vehicle usage, they should advise Fleet Maintenance of their concern. Vehicles/equipment will be cleaned on a routine basis to ensure dirt and debris doesn't interfere with proper operation and to present an appropriate image to the public.

## **V: FUEL CONSERVATION**

All operators should be aware of and practice measures to conserve fuel.

- Vehicles left at idle for more than 5 minutes shall be turned off. (Except for responding emergency vehicles.)
- Rapid starts and stops should be avoided.
- Plan ahead to avoid unnecessary trips.
- Secure equipment or lock fuel tanks to prevent theft of fuel.
- Trips shall be consolidated or combined and employees shall pool to meetings whenever feasible.

Department and division directors shall monitor fuel consumption and investigate any anomalies.

## **VI: ACQUISITION/ REPLACEMENT**

**PRIOR TO PROCESSING A REQUEST THROUGH PURCHASING FOR ANY NEW OR REPLACEMENT EQUIPMENT LICENSED OR MAINTAINED BY THE FLEET MAINTENANCE DIVISION, THE RESPONSIBLE DEPARTMENT MUST COORDINATE THE PURCHASE WITH THE FLEET MAINTENANCE DIRECTOR AND THE RISK MANAGER**

The Fleet Maintenance Division recommends that all vehicles and equipment be replaced at various intervals depending on the type of vehicle as well as the nature and intensity of its use. Timely replacement is important to minimize maintenance costs and ensure vehicle availability, safety, reliability and efficiency. The Replacement Program will:

- Ensure that fleet vehicles and equipment maintain the highest practical state of suitability, reliability, safety and efficiency.
- Establish uniform criteria for the replacement of fleet units.
- Ensure sound, equitable financial management of fleet assets.
- Control growth of the City's vehicle and equipment fleet

**UNLESS APPROVED BY THE FLEET PLANNING PANEL, A LIKE UNIT, MUST BE REMOVED FROM THE FLEET FOR EACH UNIT PURCHASED. The responsible Department may request the removal of an older/worse unit/units requiring "like maintenance" (a unit/units requiring a similar or greater amount of maintenance).**

This will help control the growth of the fleet and ensure the removal of older, difficult to maintain equipment. Since Departments may be tempted to "hang on" to older and little used equipment in case they want to use it as a "like unit," Departments may eliminate an older unit but "Bank" it. In other words, they can dispose of the unit and buy a replacement for this unit as long as it is within 36 months of actually disposing of the old unit. The Public Works Department will provide the responsible Department with a letter certifying the option to replace the unit and the time frame involved.

Historical information indicates that (based upon age) parts become obsolete and difficult to obtain, the vehicle body or frame begins to deteriorate and technology advances often render the vehicle obsolete. Replacement criteria will be based on the

life-cycle cost approach, which considers the total cost of ownership through four main components:

- Age: Is the unit at the age where safe operation and replacement parts are becoming obsolete?
- Hour Meter or Mileage: Has the unit reached its useful mileage or engine hours to the point where costly repairs such as engine or transmission failures begin to happen?
- Maintenance cost: Have life to date maintenance and repair cost exceeded 80% of replacement cost?
- Vehicle condition factor: Is the vehicle/equipment safe to operate? Is the vehicle interior in a reasonable useful condition? Does the unit have excessive body damage or need repainting?

The following is used as a guideline to determine vehicle replacement needs:

- A vehicle should achieve the average service life in years and 85% of its expected mileage or hour usage.
- A unit that has reached its life expectancy in years, but has not met the minimum mileage/hour requirement will be evaluated on a case-by-case basis.
- A unit that has met mileage/ hour requirements prior to life expectancy will be evaluated for early replacement on a case by case basis.
- In the event a units total life-to-date maintenance cost exceeds 80% of its anticipated replacement cost, the unit will be evaluated for replacement regardless of age or meter reading.
- Standard service vehicles (cars and pickup trucks) are analyzed after 10 years or 95,000 miles and annually thereafter, in order to determine if the vehicle maintenance costs are escalating. During the first 10 years or 95,000 miles it is generally assumed that vehicles are in good running condition and can be operated safely and economically.
- Large and heavy equipment is analyzed after 7 years or 6,500 Hours and annually thereafter.
- Emergency equipment such as Police cars are generally replaced as follows:
  - Police Units 4-5 years, 90,000-95,000 miles
  - Detective Units 7-10 years, 95,000 miles

The above replacement recommendations are guidelines. If a piece of equipment or vehicle continuously incurs excessive maintenance costs early in its life cycle, the Fleet Maintenance Director may recommend that it be replaced ahead of schedule. The Department Head and Public Works Director will make the final determination. Similarly, a vehicle or piece of equipment may be held past the recommended replacement period if it can be safely operated, the anticipated maintenance costs are minimal, and mileage or hours are low.

Departments will coordinate equipment acquisition/replacement with the Director of the Fleet Maintenance Division. If the Director of Fleet Maintenance and the responsible

Department do not agree, the issue will be addressed and a decision made by the Fleet Planning Panel.

All new Equipment will be approved and procured through the Fleet Maintenance Division and Purchasing Division in order to ensure standardization of all equipment and compliance with procurement procedures as outlined in the City's Purchasing Manual.

**A TWO YEAR WARRANTY IS REQUIRED ON ALL ACQUIRED VEHICLES AND EQUIPMENT.** Consider bid options for extended warranty service on all acquired vehicles and equipment.

**ACQUISITION OF USED/DEMONSTRATOR VEHICLES OR EQUIPMENT IS NOT AUTHORIZED. ANY DEPARTMENT REQUESTING PURCHASE OF USED EQUIPMENT WILL BE REQUIRED TO GET THE APPROVAL OF THE FLEET PLANNING PANEL AND MAYOR PRIOR TO MAKING A COMMITMENT TO THE VENDOR.**

The Fleet Division and Purchasing Division will evaluate and develop specifications in conjunction with the user Department as soon after the semi-annual Fleet Planning Panel Replacement Meeting as possible. No consideration will be given to requests made after the semi-annual Fleet Planning Panel Meeting replacement meeting; however, the Department director may request a special meeting of the Panel to address emergency requests.

Replacement units and additions to the fleet shall adhere to the guidelines above unless upgrade requests and justifications for such changes are presented at the Semi- Annual Fleet Planning Panel Meeting.

**OLD EQUIPMENT MAY BE TRANSFERRED TO OTHER DEPARTMENTS OR DIVISIONS IF AT THE END OF THE PROCESS THE OLDEST/WORST VEHICLE/EQUIPMENT IS ELIMINATED. OTHERWISE OLD EQUIPMENT MAY NOT BE TRANSFERRED TO OTHER DEPARTMENTS OR DIVISIONS UNLESS APPROVED BY THE FLEET POLICY PANEL.**

## **VII: VEHICLE AND EQUIPMENT SELECTION GUIDELINES**

Purpose: To provide criteria for the selection of fleet units. To meet the Departments' needs and to provide fleet units with the lowest practical operating costs with the least amount of environmental impact. To standardize fleet units, options and equipment packages whenever possible and practical. Downsizing of fleet units is encouraged. The following criteria will be used for the selection of appropriate vehicles:

- Administrative sedans will be mid-size or smaller.
- Public safety units that are subject to pursuit or emergency calls may be full-size sedans.
- Replacement units shall be equivalent to the unit being replaced, unless a more economical down grade is appropriate. (i.e. down grade a full size pick up for a compact sedan or Hybrid)
- All units will be of the smallest practical size.
- All unmarked public safety units will be mid-size. (Supervisor units, K-9 units, and SWAT units may be full size sedans, wagons or SUVs.)

- **VEHICLES AND EQUIPMENT MUST BE BID AND PURCHASED WITH ALL SPECIALTY ITEMS, NECESSARY PARTS, AND ACCESSORIES ALREADY INSTALLED. RETROFITS WILL NOT BE PERFORMED. (SPECIALIZED EQUIPMENT ON VEHICLES MAY BE TRANSFERRED FROM OLD VEHICLES TO NEW VEHICLES.)**

Alternative fuel will be considered on all units where an alternative fuel is readily available and the purchase makes good economic and operational sense. Types of alternative fuels include, but are not limited to, E85, electric, electric/gas (Hybrid) and compressed natural gas.

#### **VIII: REPLACEMENT/REPAIR COST VERSUS UNIT VALUE**

As a general rule, vehicles should not be repaired if the repair cost approaches or exceeds the value of the vehicle. When cost of repair approaches the value of the unit, every effort should be made to acquire the added funds needed to purchase a new vehicle, or if possible, delay the acquisition until funds can be found.

Often, a fleet vehicle purchase is deferred even though the above criteria has been met. However, it is important to recognize that a dollar of fleet replacement deferred is not necessarily a dollar saved. As vehicles and equipment wear out they become more unreliable, more costly to repair and, in some cases, unsafe to operate. Also, unscheduled repairs become greater leading to operating inefficiencies. One other effect of deferring vehicle replacement beyond useful life is the belief that a spare vehicle is needed because of excessive breakdowns or repair downtime. It is this sort of deferred replacement that has led to an increase in the overall size of the fleet.

#### **IX: OTHER**

- The Fleet Maintenance Division shall document and track Departmental assignments for all units in which it has asset management. Departments must notify the Fleet Maintenance Division of any changes to assignments/transfers.
- The Fleet Maintenance Division shall develop and maintain a small pool of vehicles, which may be utilized for short periods of time by requesting Departments for special events such as training trips, seasonal employees or other approved reasons.
- The Fleet Maintenance Division shall present a plan to the Fleet Planning Panel if utilization studies reflect that a unit is no longer economically feasible to retain.
- The Fleet Maintenance Division shall monitor fuel usage through the Fleet Management System and maintain a city-wide anti-idle policy for vehicles and equipment.
- The Fleet Maintenance Division shall consolidate vehicle purchases, prepare a schedule, and provide standard specifications for vehicle types.

Scheduled replacement of vehicles and equipment is a difficult goal, but the result is lower maintenance costs and higher productivity. The City can achieve this goal by first, eliminating excess vehicles and equipment and reducing the size of the fleet. Department Directors need to thoroughly review the City Vehicle and Equipment Replacement plan to determine if items can be eliminated. In some cases, vehicles and equipment may be able to be kept past the established service life depending on the use and amount of maintenance needed.

## COMPUTER EQUIPMENT/SOFTWARE

### PURPOSE AND SCOPE

These guidelines establish internal administrative policy for the acquisition of computer equipment and ensure software/system compatibility and related security measures. These guidelines apply to equipment intended for individual use by City personnel.

### COMPUTER EQUIPMENT-DEFINED

Computer equipment, as defined in these guidelines, means desktop computer operating systems (CPU, keyboard, speakers, and mouse, anything that ties into the system); equipment intended for operation by individual end users. It does not include laptops, monitors or software purchases, although the Information Technology (I.T.) Division staff must be consulted prior to purchase to review for compatibility with I.T. systems and acquire price quotes.

### SOFTWARE

Software includes, but is not limited to, such packages as Microsoft Office, (Word, Excel, PowerPoint), Corel Suite, (WordPerfect, Quattro Pro, Presentations) and Lotus Notes. I.T. Division staff will not install software on computer equipment without proof of license agreements.

### FUNDING

Departments/Divisions will fund equipment acquisitions. I.T. Division staff must provide assistance with price quotes and will provide price quotes to the Purchasing Division.

An annual allotment of Optional 1% Sales Tax Capital Equipment funds, as determined by the Mayor, may be used to purchase desktop computers. This funding is intended to provide a consistent computer equipment **replacement program**.

### PROCEDURES

1. All departments/divisions will send requests for computer equipment to the I.T. Division. I.T. Division staff must obtain applicable price quotes. Original quotes will be sent to the Purchasing Division with a copy to the requestor.
2. If the equipment is to be connected to or communicate with the City's computer systems, the Director or Assistant Director of I.T. must provide written approval on recommended price quote to ensure compatibility and address system administration and security concerns.
3. Computer replacement program will be based on the following:
  - a. An annual inventory of personal computer equipment by I.T. staff to determine need.
  - b. Prioritize replacement computers based on age, operating system, software requirements, compatibility and speed of current equipment.

- c. Additional computer equipment (not replacements) may be acquired based upon emergency, unusual situations or extenuating circumstances as approved by the Director of I.T. and the Director of Public Works.
  - d. Monitors and software purchased in conjunction with computer equipment will be paid for by the requesting department/division.
4. Hardware replacement such as printers/plotters, etc., will be purchased by the department/division.

## PURCHASING CARD MANUAL

### **1. PURPOSE**

This Purchasing Card Manual sets forth and explains the City of Cheyenne's Purchasing Card Program. The purpose of the Program is to:

- Ensure that procurement with City purchasing cards is accomplished in accordance with the policies, procedures, rules and restrictions established by the City and set forth in this Manual and the City's current purchasing policies.
- Enhance the productivity, significantly reduce paperwork, improve controls, and reduce the overall costs associated with small purchases.
- Ensure appropriate internal controls are established within each department utilizing purchasing cards so that such cards are only used for authorized purposes.
- Ensure that the City of Cheyenne bears no legal liability from inappropriate or unlawful use of purchasing cards.

### **2. CARDHOLDER AGREEMENT WITH PROGRAM POLICIES**

The Purchasing Card Program utilizes two types of purchasing cards: individually issued purchasing cards and corporate cards which may be issued for single purchases, acquisitions, or travel expenses.

All Cardholders, of either type of card issued, are obligated to adhere to the terms of this Manual and the City's current purchasing policies, which should be read carefully. Cardholders will only be issued purchasing cards after receipt of a signed Purchasing Card Agreement by the City Treasurer's Department. A Cardholder's signature on the Agreement indicates that he/she understands the intent of the Purchasing Card Program and agrees to adhere to the established guidelines and policies.

### **3. PROGRAM ADMINISTRATION**

The Purchasing Card Program is administrated by the Mayor and the City Treasurer. The Mayor and the City Treasurer, along with their designees, are responsible for ensuring that all policies and procedures are followed.

### **4. AUTHORIZATION FOR ISSUANCE OF PURCHASING CARDS**

Purchasing cards will be issued only to authorized City employees and elected officials. The general, charge limit for purchasing cards is \$2,500.00. This limit may be modified by written request of the Department Directors and approval by the Mayor.

The Mayor is responsible for authorizing the issuance of purchasing cards to elected officials and for setting the charge limits on such cards if those limits differ from the general limit.

Department Directors are responsible for authorizing the issuance of purchasing cards to eligible employees and for setting the charge limits on such cards if those limits differ from the general limit.

### **5. PROCEDURES FOR ISSUANCE OF PURCHASING CARDS**

- A. Purchasing card requests must be made by summitting a fully executed Purchasing Card Agreement to the City Treasurer's Department.

- B. The City Treasurer's Department will arrange for Cardholder training, will acquire the card, and will notify the Cardholder when it is available to be picked up.
- C. Elected officials and employees checking out corporate purchasing cards for one-time usage will also be required to obtain a fully executed Authorization to Use Corporate Card, which sets specific time periods for use of the cards.

## **6. PURCHASING CARD USE POLICY**

- A. When a Cardholder receives his or her card, it must be signed immediately and kept in a secure place. Although some cards are issued in a Cardholder's name, all cards are the property of the City of Cheyenne and may only be used for City purchases.
- B. Purchasing cards can be used to purchase goods (in-store purchases as well as mail, phone, fax, or internet) and services, and for travel related expenses. Purchasing cards may not be used to avoid or bypass appropriate purchasing policies and procedures.
- C. All acquisitions must be approved by a Department Director or approved designee.
- D. Splitting of charges to avoid applicable purchasing policies and procedures, or to avoid the transaction limit set for a purchasing card, is strictly prohibited.
- E. The use of a City purchasing card is for City purchases only. No personal charges shall be made on the cards, even if the intent is to reimburse the City for the charges. The only exception to this is insignificant travel expenses where separation of personal charges would not be reasonable. These amounts shall be reimbursed upon return and the repayment receipt forwarded with other receipts to the City Treasurer for processing.
- F. Use of purchasing cards for meals is limited to travel outside of the City where at least one overnight stay will occur or when the meal is for business purposes at the convenience of the City. Meals to promote goodwill or to boost morale are not considered at the convenience of the City. There will be no charges allowed for alcohol or entertainment.
- G. No cash advances (ATM, travelers' checks, money orders, etc.) are allowed using a purchasing card.
- H. Any incentive program benefits derived by the use of City purchasing cards shall be the property of the City. The Mayor and the City Treasurer will determine the use of such incentive program benefits.
- I. If the name of a Cardholder appears on a card, only that specific individual may use the card, and such use must be in accordance with the policies and procedures set forth herein and in the City's Purchasing Policy and Procedures Manual.
- J. Cardholders should take measures to ensure the security of purchasing cards and purchasing card numbers. Cardholders should not give their card or their card number to others to use on their behalf. If a purchasing card is lost or stolen, a Cardholder must immediately notify the City Treasurer's Department.
- K. Misuse of a City purchasing card by an authorized Cardholder may result in loss of the card and/or disciplinary action against the Cardholder, up to and including termination of employment.

## 7. VENDORS, GOODS, AND MATERIALS

- A. Vendors A purchasing card may be used with any vendor selling goods, materials, and services to the City. If a vendor will not accept a City purchasing card, please contact the City Treasurer's Department. Some vendor types have been blocked from usage. For questions about blocked vendors, please contact the City Treasurer's Department.

Merchants are paid by the City's Bank within three business days of a transaction. Merchants MUST NOT invoice the City, which could result in duplicate payments.

For tax and accounting purposes, Cardholders must request that merchants give detailed descriptions of goods purchased (not use terms such as "misc"). Cardholders shall REMIND VENDORS OF THE CITY'S TAX EXEMPT STATUS WHEN MAKING A PURCHASE.

- B. Receipt of Goods/Materials Cardholders are responsible for ensuring receipt of goods and materials ordered, and for following up with vendors to resolve delivery problems, discrepancies, and damaged goods.

For telephone or catalog orders, Cardholders must provide a complete shipping address and instructions (*e.g.*, name, department name, complete street address, room number, city, state, zip code).

If goods or materials are ordered by phone, Cardholders should request a detailed sales receipt in the package and explain that the City is a tax exempt organization.

- C. Correcting Erroneous Charges Cardholders are responsible for contacting and following up with vendors on any erroneous charges or disputed items, as soon as possible. (Most issues can be resolved this way)

If the Cardholder is unable to reach agreement with the vendor, Cardholders should then contact the City Treasurer's Department. The City Treasurer's Department may request a Cardholder to complete a Vendor Dispute form. The dispute form will be forwarded to the City's Bank for resolution with the vendor. The bank must be notified of any disputed items within sixty (60) days of the last cycle in which the item was purchased.

If credit is issued for a disputed charge, documentation should be kept explaining each credit received.

## 8. DOCUMENTATION, RECONCILIATION, AND PAYMENT PROCEDURES

Cardholders must adhere to the following record management procedures. Failure to keep receipts or frequent abuse of these provisions will result in cancellation of a Cardholder's purchasing card.

- A. Documentation Any time a purchase is made using a purchasing card, a Cardholder must obtain a customer copy of the itemized charge slip, sales slip, cash register receipt, invoice, order form or receiving document, which will become the accounting document. In addition, a Purchasing Card Transaction Log should be maintained to expedite reconciliation and approval. Charge slips and transaction logs should be kept together and forwarded to the Cardholder's Office Manager/Secretary.
- B. Missing Documentation If a Cardholder does not have an itemized receipt or other itemized purchasing record, a reconciliation statement that includes a description of the item, date of purchase, merchant's name, and an explanation for the missing support documents must be submitted. The reconciliation statement must be signed and dated by both the Cardholder and

the appropriate Department Director. Frequent instances of missing documentation will cause a Cardholder's purchasing card use privilege to be revoked.

- C. Payment Procedures Purchases made by Cardholders and listed on the purchasing card statement must be authorized by Department Directors, account numbers assigned for each transaction, and submitted to the City Treasurer for payment.

For any missing receipt or other purchasing record, a Cardholder will need to follow the instructions on line 2 above (Missing Documentation). It is a Cardholder's responsibility to submit receipts in a timely manner. If it is not done promptly, the Cardholder's Department will be responsible for interest or late charges added to the billing statements.

## **9. BILLING PAYMENT AND ACCOUNT DISTRIBUTION PROCESS**

At the close of every billing cycle, each Cardholder will receive a statement of activity. This is to be used to reconcile logs and purchasing records. A control account statement will also be mailed at the same time to the Cardholder's Department. This statement is used to pay the bank. Each Department is responsible for entering the requisition for payment for their respective Cardholders.

When a Cardholder receives the monthly statement it should be immediately given to the person in charge of reconciling the account. The detail logs and other purchasing records should be matched to the statement. If a receipt is missing, a Cardholder should be immediately contacted to see if one has been received. If not, the vendor should be contacted and asked to provide a detailed receipt, credit memo, or an adequate substitute. Departments should verify the sales tax exemption for each purchase and, if such tax was paid, request a credit.

## **10. AUDITS**

Card usage will be monitored and random audits will be conducted on both purchasing card activity and the Cardholder's acquisition of purchasing receipts.

## **11. MISUSE OF PURCHASING CARDS**

Misuse of a purchasing card may result in disciplinary action, including:

- Permanent revocation of purchasing card privileges;
- Assignment of wages for repayment of discrepancies; or
- Notification of the City Treasurer and Internal Auditor to investigate the matter further.

If, for any reason, disallowed charges are not repaid by the Cardholder before a card billing is due and payable, the City shall retain the right to withhold any and all funds payable to the Cardholder up to an amount of the disallowed charges and interest at the same rate as charged by the purchasing card contractor.

## **12. PURCHASING CARD CANCELLATION**

A Cardholder may cancel a purchasing card at anytime. To do so, the Cardholder should cut the card in half and forward it to the City Treasurer's Department, along with a written cancellation request from the appropriate Department Director.

A purchasing card may be cancelled by the City Treasurer or a Department Director for any reason, including:

- The card is lost or stolen;
- If the card is used in a manner which is inconsistent with this Program or other City policies; or
- The Cardholder retires, resigns or is otherwise terminated from City employment.

**City of Cheyenne  
Purchasing Card Agreement**

Name of Cardholder:  
Department Name & Number:  
Supervisor's Name & Title:

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Cardholder agrees to accept responsibility for the protection and proper use of the Purchasing Card in accordance with the terms and conditions below:

1. Cardholder agrees to provide the supporting receipts from vendors and/or transaction logs for each transaction, as designated by City policies and procedures. Failure to report or document any purchase may be deemed an improper use of a card.
2. If a card is lost or stolen, Cardholder must notify the City Treasurer's Department immediately.
3. Cardholder's department shall be responsible for all charges, including fees and interest, incurred from the proper use of a card.
4. **CARDHOLDERS SHALL NOT MAKE PERSONAL PURCHASES ON A CARD.**  
Cardholder understands that he/she shall be personally liable for any improper use of a card and agrees to pay all costs, expenses, fees, and interest associated with such use. Cardholder understands that his/her improper use of a card may be cause for disciplinary action by the City, including termination, and that improper use of a card may subject Cardholder to criminal prosecution. Cardholder understands that the City may withhold amounts attributable to improper use by Cardholder from any paycheck.
5. Cardholder understands that should his/her employment with the City terminate for any reason, the card must be returned to the City Treasurer's Department. Cardholder understands that the City may withhold his/her final paycheck until the card is returned. Cardholder also understands that the City may withdraw authorization to use the card and require the return of the card at any time, and for any reason.
6. Cardholder understands that use of a card is for official City Business only, as explained in the City's Purchasing Card Manual.
7. Cardholder acknowledges by his/her signature to this agreement, that he/she has received, read and understands the City's Purchasing Card Manual; and has read and understands this agreement.

Cardholder Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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Credit limit:     \$2,500.00    .

Division Director Approval: \_\_\_\_\_ Date: \_\_\_\_\_

City Treasurer's Department

Approval: \_\_\_\_\_ Date: \_\_\_\_\_



CITY OF CHEYENNE  
OFFICE OF THE CITY TREASURER  
2101 O'NEIL AVE  
CHEYENNE, WY 82001

**AUTHORIZATION TO USE CORPORATE CREDIT CARD**

I hereby authorize the undersigned employee of the City of Cheyenne, Wyoming to use the City of Cheyenne Corporate Credit Card for purchases of goods, supplies and travel expenditures on behalf of the City of Cheyenne. The employee must provide his/her City issued identification card, when using the Corporate Credit Card, as proof of employment.

\_\_\_\_\_  
Print Employee Name

\_\_\_\_\_  
Signature of Employee

This authorization is valid for the period beginning \_\_\_\_\_ and ending \_\_\_\_\_.

If you have questions on the use of this card, please call the City Treasurers' Department at 307-637-6336.

\_\_\_\_\_  
City Treasurer

**CITY OF CHEYENNE  
TRAVEL POLICY**

1. A Travel Authorization Voucher must be approved and sent to the Budget and Finance prior to the date of departure.
  - a. If there is no cost to the City, it is not necessary to complete a travel voucher for out of town travel that will be over in one day.
  - b. If registration, airfare, meals, etc. are paid on a separate purchase order a travel authorization must still be completed, even though no other expenses are incurred, and those charges must be noted on the travel voucher.
  - c. If more than one person will be reimbursed for expenses, a separate authorization must be completed for each individual.
2. The City will pay for the following expenses:
  - a. Travel - airfare, lodging, mileage, taxi, rental cars and parking. All charges must be accompanied by an itemized receipt. If a charge is incurred where a receipt is not possible (for example, use of luggage carts at airports), a statement signed by the employee must be submitted, itemizing the charges. Movies charged to the room must be paid by the employee.
  - b. Registration - extra fees for social events such as golfing, sightseeing tours, concerts, etc. must be paid separately by the employee if they wish to attend such events.
  - c. Meals - itemized receipts must be submitted for all meals
    - (1) **No alcoholic beverages** will be reimbursed nor can they be charged to the City credit card.
    - (2) Meals will be reimbursed for City employees and others as it relates to City business; meal charges for spouses, friends or companions are not allowed to be charged to the City credit card.
    - (3) Meals will be reimbursed at actual cost plus reasonable tip not to exceed \$50 per day. Consideration will be made for higher cost areas. Tips should not exceed 15% or \$1.00, whichever is greater unless a higher percentage is charged by the establishment.
    - (4) If meals are included in the registration fee, and the employee chooses to eat elsewhere, those meals will not be reimbursed, nor will the City pay for snacks or drinks between meals.
  - d. Long distance phone calls from the hotel - only to the office as necessary. Cell phones may be checked out from the Parking Division, if needed.
3. City vehicles will be used for non-local travel whenever possible.
  - a. If a City vehicle is not available, permission to use a personal vehicle must be obtained from the Department Director and the employee must submit a travel request for personal vehicle use.
  - b. If a City vehicle is available, and an employee chooses to drive his/her own vehicle, the City will pay for fuel only. The employee must provide receipts for the fuel purchases.
4. The completed travel voucher must be returned to the City Treasurer within five (5) working days for reimbursement.
5. Use of City purchasing cards per Resolution 4384:

- a. Credit cards shall not be used to pay expenses of spouse or any other person not affiliated with City business.
  - b. The purchase of alcoholic beverages shall not be charged to City credit cards.
  - c. Copies of itemized receipts for meals, hotel, etc. along with the credit card receipt shall be attached to the travel voucher and filed with the City Treasurer within five (5) working days of return from the trip.
6. Any expenses claimed that are not accompanied by an itemized receipt will not be reimbursed, except as noted.

If there are any questions regarding this memo, please contact the City Treasurer at Ext 6336

## **PART V**

### **DISPOSAL OF SURPLUS PROPERTY**

In compliance with Wyoming Statute §15-1-112, any City-owned property valued at \$500 or more, except used vehicles traded in on new vehicles, shall be formally advertised calling for sealed bids or sold at public auction, unless sold to an agency of the federal government, State of Wyoming, or a political subdivision of the State of Wyoming upon fulfillment of the same conditions specified for trades involving real property.

Any department wishing to dispose of an item should submit a memorandum to the Purchasing Division giving a complete description of the item, reason for disposal, its location, and an estimate of its value. If the estimated value is less than \$500, the Purchasing Division may elect to get additional estimates of the value.

If the value is reasonably determined to be less than \$500, the department/division will then, by memo, email, or other means, notify other City departments of the availability of the item. If no other City department needs the item, it may be sold to the person submitting the highest offer within a specified time, or stored for later disposal at public auction.

If the item is estimated to be worth \$500 or more, the Purchasing Division will notify other departments of the availability of the item. If not needed by the City, the item may be held and sold at the City's next scheduled public auction, or may be advertised for sale by sealed bids. The Purchasing Division will handle all aspects of the bidding process, including placing the "consideration of bids" on the agenda with recommendation for disposal of the item. At its discretion, the Governing Body may award the bid to the highest responsible bidder or may reject all bids.

Items determined to have no value should be recycled if possible, or may be discarded if not recyclable.

Real property shall be declared surplus by the Governing Body and disposed of by soliciting bids; or it may be traded for other real property or sold or traded to the State of Wyoming, an agency or instrumentality of the state authorized to hold property in its name, or any political subdivision of the state, after a public hearing, notice of which includes the appraised value of the property and which is published at least once each week for three (3) consecutive weeks in a newspaper of general circulation in Laramie County.

When City departments/divisions need to dispose of computers, the computer first must be delivered to Information Technology (Room 110). I.T. will remove any software licensed to the City prior to final disposition of the computer. I.T. will insure that only the appropriate software is transferred with the computer.

Ref: Wyo. Statute §15-1-112

**“SPECIAL PROVISIONS RELATING TO THE  
SALE, LEASE OR OTHER DISPOSAL OF REAL PROPERTY”  
(LAND AND/OR BUILDINGS)**

Prior to the sale, lease or other disposal of real property, the following tasks must be performed:

1. A land description for the land to be sold, leased or disposed of must be prepared by the City Surveyor. If a land description has been prepared by an independent engineer, surveyor, or other non-City personnel, the land description must be reviewed and approved by the City Surveyor or City Engineer.
2. An ownership and encumbrance report ("O & E Report:) must be obtained from a title insurance company doing business in Cheyenne. The price for an O & E Report is typically \$100.00. The purpose of the O & E report is to confirm that the City actually holds title to the land to be sold, leased or otherwise disposed of, whether the land is subject to reservations, easements, covenants, or other land use restrictions that should be considered by the City prior to the sale, lease or other disposition.
3. A GIS report for the land to be sold, leased or otherwise disposed of should be prepared for the purpose of identifying sewer mains, water mains, storm sewer mains, storm water detention facilities, drainage easements, utility easements, and other matters which should be considered by the City prior to the sale, lease or other disposition.
4. A report for the land to be sold, leased or otherwise disposed of should be prepared by the City Clerk and the City Treasurer for the purpose of identifying whether the land is subject to restrictions imposed by prior deeds or other instruments of conveyance, by ordinances or resolutions, or by contractual relationships which may restrict the ability of the City to sell, lease, or dispose of the land. In particular, the report prepared by the City Treasurer should discuss whether the requirements of prior grant agreements restrict the City's ability to sell, lease or dispose of the land.
5. A report for the land to be sold, leased or other disposed of should be prepared by the Planning Services Department describing all land use restrictions which are applicable to the property under the UDC and other provisions of the Cheyenne City Code.
6. A checklist should be prepared demonstrating that each Department of City Government, specifically including the Board of Public Utilities, has considered the proposed sale, lease or other disposition of the land. Each Department must either approve the proposed sale, lease, or other disposition of land, state that the Department needs the land for any particular use, or state whether the Department objects to the proposed sale, lease or other disposition for any reason.
7. Following approval of the Mayor, and the Governing Body when required, and prior to the delivery of any deed, lease or other instrument conveying land, or any interest in land, to a buyer, lessee, or other grantee, the City must make a final determination whether it should reserve easements for rights-of-way, streets, alleys, water mains, sewer mains, storm water utilities, or other like or similar public infrastructure. This determination would typically be made by the City Engineer following a final consultation with the Board of Public Utilities.

**Check List for Disposal of Real Property  
(Land and/or Buildings)**

Prior to the sale, lease or other disposal of real property, the following tasks must be performed:

Description	Attachment	Name/Signature
A land description for the land to be sold, leased or disposed of must be prepared by the City Surveyor. If a land description has been prepared by an independent engineer, surveyor, or other non-City personnel, the land description must be reviewed and approved by the City Surveyor or City Engineer.	Yes. Attach a copy of the description	Approved by:
An ownership and encumbrance report ("O & E Report:) must be obtained from a title insurance company doing business in Cheyenne. The price for an O & E Report is typically \$100.00. The purpose of the O & E report is to confirm that the City actually holds title to the land to be sold, leased or otherwise disposed of, whether the land is subject to reservations, easements, covenants, or other land use restrictions that should be considered by the City prior to the sale, lease or other disposition.	Yes. Attach a copy of the report.	Name of person who got report:
A GIS report for the land to be sold, leased or otherwise disposed of should be prepared for the purpose of identifying sewer mains, water mains, storm sewer mains, storm water detention facilities, drainage easements, utility easements, and other matters which should be considered by the City prior to the sale, lease or other disposition.	Yes. Attach a copy of the report.	Name of person who got report:
A report for the land to be sold, leased or otherwise disposed of should be prepared by the City Clerk and the City Treasurer for the purpose of identifying whether the land is subject to restrictions imposed by prior deeds or other instruments of conveyance, by ordinances or resolutions, or by contractual relationships which may restrict the ability of the City to sell, lease, or dispose of the land. In particular, the report prepared by the City Treasurer should discuss whether the requirements of prior grant agreements restrict the City's ability to sell, lease or dispose of the land.	Yes. Attach a copy of the report.	City Clerk:  City Treasurer:
A report for the land to be sold, leased or other disposed of should be prepared by the Planning Services Department describing all land use restrictions which are applicable to the property under the UDC and other provisions of the Cheyenne City Code	Yes. Attach a copy of the report.	Prepared by:

**Check List for Disposal of Real Property  
(Land and/or Buildings)**

Prior to the sale, lease or other disposal of real property, the following tasks must be performed:

<p>Each Department of City Government, specifically including the Board of Public Utilities, has considered the proposed sale, lease or other disposition of the land. Each Department must either approve the proposed sale, lease, or other disposition of land, state that the Department needs the land for any particular use, or state whether the Department objects to the proposed sale, lease or other disposition for any reason.</p>	<p>See below of all departments.</p>	<p>Sign off and circle approve/needs/or objects. Attach the reason for needing the property or objecting the sale of the property.</p>
--	--------------------------------------	--

BOPU	<p>Approve Needs Objects</p>	
Clerk	<p>Approve Needs Objects</p>	
Engineering	<p>Approve Needs Objects</p>	
Fire	<p>Approve Needs Objects</p>	
Mayor	<p>Approve Needs Objects</p>	
Parks & Recreation	<p>Approve Needs Objects</p>	
Planning/Development	<p>Approve Needs Objects</p>	
Police	<p>Approve Needs Objects</p>	
Public Works	<p>Approve Needs Objects</p>	
Treasurer	<p>Approve Needs Objects</p>	

## MEETING REIMBURSEMENTS

When an individual City employee or official, acting in his/her official capacity, is required to attend a luncheon or other meeting at a local establishment where meals are served, the employee should pay for the meal with their purchasing card or can be reimbursed through the petty cash fund in the Budget and Finance Office (tip should not exceed 15%). When the meal receipt is presented for reimbursement, it must be accompanied by a properly filled out petty cash reimbursement form signed by the department/division director. Petty cash reimbursement forms may be obtained from the Budget and Finance Office and may be photocopied as needed.

When several employees and/or City officials attend a function where meals are served, the meals may be charged and a single requisition processed. The requisition must be entered within one week after the date of the function, but may be entered prior to the event with an estimated amount if a purchase order is required by the establishment where the food is to be served. Requisitions must state for whom the meals are being paid, the place, purpose and date of the event. It is best to use the purchasing card when applicable.

If an employee is required to attend a meeting during a lunch break and is not given the option of taking his/her lunch break earlier or later, the purchase of food items for these meetings by the City will be allowed. These types of meetings are infrequent and therefore, are allowed under Internal Revenue Service guidelines.

If attending a one (1) day meeting, and the employee is reimbursed, the amount may be considered taxable income in accordance with Internal Revenue Service guidelines.

The City will not purchase or reimburse for any breakfast meetings.

Meal expenses while traveling outside the City should be handled in accordance with guidelines for non-local travel and should be reported on the employee's travel voucher. (See Travel Policy)

Meetings where snacks or meals are served that cost extra money will require the approval of the Department Director.

## **REIMBURSEMENT TO EMPLOYEES FOR PURCHASE OF GOODS AND SERVICES**

This procedure does not apply to travel reimbursement.  
See separate procedure for "Meeting Reimbursements."

From time to time employees purchase items for City use with their own funds and apply to the City for reimbursement. Almost every store in the area sells to the City of Cheyenne on a charge basis making it unnecessary to pay cash for most purchases. However, an employee may be making an expenditure for a very small purchase from a store where the City rarely does business, or from a store that will not sell on a charge basis for very small amounts. Employees are not required to use their own funds to make a purchase for the City, but the employee may elect to do so under certain circumstances. Following are procedures for which employees may be reimbursed for purchases made on behalf of the City.

If an employee finds it necessary to pay cash, the expenditure must be approved by the department/division director. If the expenditure is under \$25.00, the employee should then attach the cash receipt to a petty cash slip (available from the Budget and Finance Office). The petty cash slip must be signed by the department/division director and then be presented to the Budget and Finance Office for reimbursement.

If the expenditure exceeds \$25.00, the department/division must enter a requisition to reimburse the employee. The reimbursement will be processed through the normal purchase order/voucher "payable" which is approved by the Governing Body twice monthly.

Expenditures made by an employee on behalf of the City are not exempt from sales taxes. Only expenditures charged to and paid directly by the City are tax exempt. Therefore, the employee must be reimbursed also for the tax paid on the purchase.

Employees should always show their City Identification cards when making purchases for the City whether they are paying cash or charging the expenditure to the City. Employees may charge items on behalf of the City only with authorization of the department/division director in accordance with departmentally established procedures. When charging to the City, always provide a name, and/or department/division. Also, sign and print your name legibly to insure the invoice can easily be assigned to the department/division.

No employees may order any item for his/her personal use and charge it to the City or pay for it with City funds. Having personal orders delivered to the City is also prohibited.

## REQUISITIONS

A requisition is a request to generate a purchase order. Requisitions are initiated by the user department/division. Requisitions are normally computer generated utilizing Innoprise, the City's accounting software. All requisitions resulting in expenditures must be in accordance with the appropriate provision of this Purchasing Procedure Manual.

Each department/division has designated employees who prepare requisitions. The preparer inputs the requisition including vendor, description, amount, and budget code. Additional information may be included or attached to the requisition to justify the expenditure. Descriptions must be short, concise and understandable by approvers at all levels. The preparer also ensures there are adequate funds available for the transaction. If not, the preparer will also initiate a budget transfer and include a note to that effect in the "User Comments" section. Finally, the preparer is responsible to ensure the vendor address is correct.

Each department/division also has designated employees who provide approval of requisitions. This approver is responsible to ensure the purchase is appropriate and the account used is accurate. They also provide an additional check for adequate available funds.

Note: If the cost of purchasing goods or services is split between two (2) or more departments, one (1) of those departments must prepare a paper requisition for approval by all departments involved. The person who approves the requisitions will need to sign off on the paper to give the Treasurer's Department authorization to process this request. The requisition will not be processed without the proper signatures. Upon receipt of the completed and approved requisition, the Treasurer's Department will prepare a requisition, generate a purchase order and notify all departments involved of the purchase order number. Departments should report any errors on the purchase order to the Purchasing Division immediately. Blank paper requisitions are available on the S: drive and in the Forms Section of this manual.

If a budget transfer is required, the Budget and Finance Office must approve the requisition before a purchase order is generated.

The Purchasing Division provides final approval on all requisitions. The Purchasing Division reviews the requisition for compliance with the City's procurement policies and procedure, and if necessary, will obtain quotes or formal bids. When all requirements of this manual have been met the Purchasing Division will generate a purchase order.

NOTE: Detailed instructions for preparing requisitions in Innoprise are available from the Purchasing Division. The Purchasing Division will also provide training on requisition entry and approval upon request.

## **PURCHASE ORDERS**

Purchase Orders (PO's) are generated from requisitions entered by departments/divisions.

A person who is authorized to approve vouchers for the department/division must verify that the goods or services were actually received. In signing the approval stamp, this person certifies under penalty of perjury that this item/service was received and the account is correct and approved for payment.

If the requisition was prepared by the Purchasing Division from a paper requisition, the Purchasing Division will notify the departments/divisions with the purchase order number. Notify the Purchasing Division immediately if there are any discrepancies.

Purchase Orders are processed on a daily basis. However, delays may occur due to computer downtime, or incomplete information needed on the requisition.

### **Change Orders:**

Change Orders are required if the PO has already been complete. The Purchasing Division can do a change order on any PO that has not been fully paid. If the PO has been paid, and it is realized the account number is incorrect, the Budget and Finance Office will need to be contacted to do an adjustment on their side.

When a change order is needed, send an email to the Purchasing Division describing the changes, and the Purchasing Division will process the change order.

Change orders are usually the result of wrong account numbers, wrong amounts, duplicate invoices, etc.

Paying for an item means it has been received. PO's may be used to place orders and will not be paid until item(s) are received. Example: the purchase of vehicles/equipment.

## **PART VI**

### **FEDERAL PROVISIONS**

- **Davis Bacon Requirements**
- **Suspension and Debarment, Voluntary Exclusion**

By signing the bidding documents, and contract, the Bidder certifies that they are not suspended, debarred, or voluntarily excluded from Federal financial or non-financial assistance, nor are any of the sub-contractors or material suppliers. The contractor will notify the City of Cheyenne by certified mail should the contractor or any of its sub contractors become debarred, suspended, or voluntarily excluded during the term of the Contract.

- Check with the grant guidelines for other federal requirements and provisions.

**FEDERALLY REQUIRED AND OTHER MODEL CLAUSES**

**A.1 - Federally Required and Other Model Contract Clauses**

1. <u>Fly America Requirements</u> .....	VI.3
2. <u>Buy America Requirements</u> .....	VI.3
3. <u>Charter Bus and School Bus Requirements</u> .....	VI.5
4. <u>Cargo Preference Requirements</u> .....	VI.6
5. <u>Seismic Safety Requirements</u> .....	VI.6
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31. <u>Drug and Alcohol Testing</u> .....	VI.37

## **1. Fly America Requirements**

**49 U.S.C. §40118**  
**41 CFR Part 301-10**

### **Applicability to Contracts**

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

### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down Requirements**

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

### **Model Clause/Language**

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

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

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## **2. Buy America Requirements**

**49 U.S.C. 5323(j)**  
**49 CFR Part 661**

### **Applicability to Contracts**

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).

### **Flow Down**

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

**Mandatory Clause/Language**

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

*Buy America* - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**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 \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*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 \_\_\_\_\_

**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but 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 \_\_\_\_\_

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### **3. Charter Bus Requirements**

**49 U.S.C. 5323(d)**

**49 CFR Part 604**

#### **Applicability to Contracts**

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

#### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

#### **Flow Down Requirements**

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

#### **Model Clause/Language**

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

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

### **3. School Bus Requirements**

**49 U.S.C. 5323(F)**

**49 CFR Part 605**

#### **Applicability to Contracts**

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

#### **Flow Down Requirements**

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

#### **Model Clause/Language**

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

School Bus Operations - Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless

qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

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#### **4. Cargo Preference Requirements**

**46 U.S.C. 1241**  
**46 CFR Part 381**

##### **Applicability to Contracts**

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

##### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

##### **Flow Down**

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

##### **Model Clause/Language**

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. *to use* privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. *to furnish within* 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo *described in the preceding paragraph* to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (*through the contractor in the case of a subcontractor's bill-of-lading.*) c. *to include these* requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

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#### **5. Seismic Safety Requirements**

**42 U.S.C. 7701 et seq. 49**  
**CFR Part 41**

##### **Applicability to Contracts**

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

##### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

##### **Flow Down**

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

## **Model Clauses/Language**

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

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

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## **6. Energy Conservation Requirements**

**42 U.S.C. 6321 et seq.  
49 CFR Part 18**

### **Applicability to Contracts**

The Energy Conservation requirements are applicable to all contracts.

### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

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

### **Model Clause/Language**

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

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

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## **7. Clean Water Requirements**

**33 U.S.C. 1251**

### **Applicability to Contracts**

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

### **Flow Down**

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

### **Model Clause/Language**

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

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## **8. Bus Testing**

**49 U.S.C. 5318(e)**

**49 CFR Part 665**

### **Applicability to Contracts**

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

### **Model Clause/Language**

Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
2. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
3. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
4. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

### **CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS**

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## 9. Pre-award and Post Delivery Audits Requirements

**49 U.S.C. 5323**  
**49 CFR Part 663**

### Applicability to Contracts

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

### Model Clause/Language

- Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.
- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.
- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended," 49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

1. Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
2. Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
3. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

### BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

*(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)*

**Certificate of Compliance**

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Certificate of Non-Compliance**

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**10. Lobbying**

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

**Applicability to Contracts**

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

**Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

**Flow Down**

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

**Mandatory Clause/Language**

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.  
Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.* ]
- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)
- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

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

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

##### Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

\_\_\_\_\_  
Signature of Contractor's Authorized Official  
\_\_\_\_\_  
Name and Title of Contractor's Authorized Official  
\_\_\_\_\_  
Date

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## 11. Access to Records and Reports

**49 U.S.C. 5325**  
**18 CFR 18.36 (i)**  
**49 CFR 633.17**

### Applicability to Contracts

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

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

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

### Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with

access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

**Requirements for Access to Records and Reports by Types of Contract**

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

**Sources of Authority**

1. 49 USC 5325 (a)
2. 49 CFR 633.17
3. 18 CFR 18.36 (i)

**12. Federal Changes**

**49 CFR Part 18**

**Applicability to Contracts**

The Federal Changes requirement applies to all contracts.

## **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

## **Flow Down**

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

## **Model Clause/Language**

No specific language is mandated. The following language has been developed by FTA.

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

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## **13. Bonding Requirements**

### **Applicability to Contracts**

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  1. 50% of the contract price if the contract price is not more than \$1 million;
  2. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  3. \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

### **Flow Down**

Bonding requirements flow down to the first tier contractors.

### **Model Clauses/Language**

FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

### **Bid Bond Requirements (Construction )**

- a. Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

b. Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

**Performance and Payment Bonding Requirements (Construction)**

The Contractor shall be required to obtain performance and payment bonds as follows:

a. Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

b. Payment bonds

1. The penal amount of the payment bonds shall equal:
  - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
  - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - iii. Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

**Performance and Payment Bonding Requirements (Non-Construction)**

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

- a. The following situations may warrant a performance bond:
  1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
  2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
  3. Substantial progress payments are made before delivery of end items starts.
  4. Contracts are for dismantling, demolition, or removal of improvements.
- b. When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
  1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
  2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- c. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.
- d. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
  1. The penal amount of payment bonds shall equal:
    - i. Fifty percent of the contract price if the contract price is not more than \$1 million;
    - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
    - iii. Two and one half million if the contract price is increased.

#### **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

#### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

#### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the

Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

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#### **14. CLEAN AIR**

**42 U.S.C. 7401 et seq**

**40 CFR 15.61**

**49 CFR Part 18**

##### **Applicability to Contracts**

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

##### **Flow Down**

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

##### **Model Clauses/Language**

No specific language is required. FTA has proposed the following language.

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

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

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#### **15. Recycled Products**

**42 U.S.C. 6962**

**40 CFR Part 247**

**Executive Order 12873**

##### **Applicability to Contracts**

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

##### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

##### **Flow Down**

These requirements flow down to all to all contractor and subcontractor tiers.

##### **Model Clause/Language**

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

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## 16. Davis-Bacon and Copeland Anti-Kickback Acts

### Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

### Clause Language

#### Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and

3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The [ *insert name of grantee* ] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [ *insert name of grantee* ] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [ *insert name of grantee* ] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
2. (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
3. (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) *Apprentices* - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of

Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees* - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity* - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

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

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

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm

ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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## 17. Contract Work Hours and Safety Standards Act

### Background and Application

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3)(A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

### Clause Language

#### Contract Work Hours and Safety Standards

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 therefor 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** - The (write in the name of the grantee) 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.

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## 18. [ RESERVED ]

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### 19. No Government Obligation to Third Parties

#### Applicability to Contracts

Applicable to all contracts.

#### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

#### Flow Down

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

#### Model Clause/Language

While no specific language is required, FTA has developed the following language.

#### No Obligation by the Federal Government.

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

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### 20. Program Fraud and False or Fraudulent Statements and Related Acts

**31 U.S.C. 3801 et seq.**  
**49 CFR Part 31 18 U.S.C. 1001**  
**49 U.S.C. 5307**

#### Applicability to Contracts

These requirements are applicable to all contracts.

#### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

#### Flow Down

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

## Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

### **Program Fraud and False or Fraudulent Statements or Related Acts.**

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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## **21. Termination**

### **49 U.S.C. Part 18 FTA Circular 4220.1E**

#### **Applicability to Contracts**

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

#### **Flow Down**

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

#### **Model Clause/Language**

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

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

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

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

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

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

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

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

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

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

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

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment

for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

- h. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

- i. **Termination for Convenience or Default (Architect and Engineering)** The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

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

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

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

- j. **Termination for Convenience of Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

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

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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## 22. Government-Wide Debarment and Suspension (Nonprocurement)

### 49 CFR Part 29 Executive Order 12549

#### Background and Applicability

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

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29. 220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

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

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

#### Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

#### Suspension and Debarment

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

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

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

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

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## 23. Privacy Act

### 5 U.S.C. 552

#### Applicability to Contracts

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

#### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

#### Flow Down

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

#### Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

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

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## 24. Civil Rights Requirements

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

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

### Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

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

### Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

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

1. *Nondiscrimination* - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. *Equal Employment Opportunity* - The following equal employment opportunity requirements apply to the underlying contract:
  - a. *Race, Color, Creed, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - b. *Age* - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. *Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
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## **25. Breaches and Dispute Resolution**

### **49 CFR Part 18** **FTA Circular 4220.1E**

#### **Applicability to Contracts**

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

#### **Flow Down**

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

#### **Model Clauses/Language**

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

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

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

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

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of

them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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## **26. Patent and Rights in Data**

### **37 CFR Part 401 49 CFR Parts 18 and 19**

#### **Applicability to Contracts**

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. 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.

#### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

#### **Flow Down**

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

#### **Model Clause/Language**

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

#### **CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

**A. Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
  - a. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
  - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below.

As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
  2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
- c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
- d. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- f. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
- g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.* , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

**B. Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:

1. *General* - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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## **27. Transit Employee Protective Agreements**

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

### **Applicability to Contracts**

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

### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### **Flow Down**

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

### **Model Clause/Language**

Since no mandatory language is specified, FTA had developed the following language.

### **Transit Employee Protective Provisions.**

1. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
  - a. *General Transit Employee Protective Requirements* - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit

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

b. *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.*

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

c. *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.*

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

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

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## **28. Disadvantaged Business Enterprise(DBE)**

### **49 CFR Part 26**

#### **Background and Applicability**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

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

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

### Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

### Disadvantaged Business Enterprises

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is \_\_ %. A separate contract goal [**of \_\_ % DBE participation has**] [**has not**] been established for this procurement.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. *{If a separate contract goal has been established, use the following}* Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following [**concurrent with and accompanying sealed bid**] [**concurrent with and accompanying an initial proposal**] [**prior to award**]:
  1. The names and addresses of DBE firms that will participate in this contract;
  2. A description of the work each DBE will perform;
  3. The dollar amount of the participation of each DBE firm participating;
  4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
  5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
  6. If the contract goal is not met, evidence of good faith efforts to do so.

**[Bidders][Offerors]** must present the information required above [**as a matter of responsiveness**] [**with initial proposals**] [**prior to contract award**] (see 49 CFR 26.53(3)).

*{If no separate contract goal has been established, use the following}* The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, [**the contractor may not**

**hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

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

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## **29. [ RESERVED ]**

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### **30. Incorporation of Federal Transit Administration (FTA) Terms**

#### **FTA Circular 4220.1E**

##### **Applicability to Contracts**

The incorporation of FTA terms applies to all contracts.

##### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

##### **Flow Down**

The incorporation of FTA terms has unlimited flow down.

##### **Model Clause/Language**

FTA has developed the following incorporation of terms language:

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

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### **31. Drug and Alcohol Testing**

#### **49 U.S.C. §5331**

#### **49 CFR Parts 653 and 654**

##### **Applicability to Contracts**

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

##### **Applicability to Micro-Purchases**

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

## **Flow Down Requirements**

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

## **Model Clause/Language**

### **Introduction**

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

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

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

### **Explanation of Model Contract Clauses**

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

### **Drug and Alcohol Testing Option 1**

The contractor agrees to:

*(a) participate in ( grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.*

**Drug and Alcohol Testing  
Option 2**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

**Drug and Alcohol Testing  
Option 3**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

**PART VII**

**FORMS**



**VERBAL QUOTE DOCUMENTATION FORM**

**\$2,500.00 to \$4,999.99**

Send this completed form to Purchasing when completed, or attach a copy to the requisition in the Innoprise System. Attach more pages if necessary.

Name: \_\_\_\_\_ Division/Department: \_\_\_\_\_

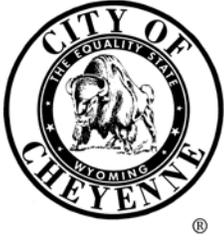
Quantity	Item or Model # or Brand Name	Description

1. Vendor Name: \_\_\_\_\_  
 Address: \_\_\_\_\_ City \_\_\_\_\_ St. \_\_\_ Zip. \_\_\_\_\_  
 Phone: \_\_\_\_\_ Contact Person: \_\_\_\_\_  
 Quoted Price \$ \_\_\_\_\_ Date of Quote: \_\_\_\_\_  
 Expiration Date: \_\_\_\_\_

2. Vendor Name: \_\_\_\_\_  
 Address: \_\_\_\_\_ City \_\_\_\_\_ St. \_\_\_ Zip. \_\_\_\_\_  
 Phone: \_\_\_\_\_ Contact Person: \_\_\_\_\_  
 Quoted Price \$ \_\_\_\_\_ Date of Quote: \_\_\_\_\_  
 Expiration Date: \_\_\_\_\_

3. Vendor Name: \_\_\_\_\_  
 Address: \_\_\_\_\_ City \_\_\_\_\_ St. \_\_\_ Zip. \_\_\_\_\_  
 Phone: \_\_\_\_\_ Contact Person: \_\_\_\_\_  
 Quoted Price \$ \_\_\_\_\_ Date of Quote: \_\_\_\_\_  
 Expiration Date: \_\_\_\_\_

Requisition # \_\_\_\_\_ Date: \_\_\_\_\_



**REQUEST FOR QUOTATION**

**THIS IS NOT AN ORDER**

**CITY OF CHEYENNE  
CHEYENNE, WYOMING 82001**

Mark response with RFQ\_\_\_\_\_

PLEASE RETURN QUOTE BY: \_\_\_\_\_ TIME: \_\_\_\_\_

FAX (\_\_\_\_) \_\_\_\_\_

EMAIL: \_\_\_\_\_

Please quote your best price, and terms on the items listed below and return this form to the Purchasing Division. Quote all prices F.O.B destination, City of Cheyenne, WY 82001. If unable to quote, please indicate on this form and return.

DESCRIPTION OF ITEM	QTY	PRICE EACH	TOTAL

BIDDER'S NAME \_\_\_\_\_ CONTACT NAME: \_\_\_\_\_  
 ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ ST. \_\_\_ Zip. \_\_\_\_\_  
 PHONE: \_\_\_\_\_ FAX. \_\_\_\_\_  
 EMAIL: \_\_\_\_\_

In compliance with the above, the undersigned offers and agrees to furnish all items listed above upon which prices are quoted, at the price set opposite each item, if this proposal must be accepted within \_\_\_\_\_ days from the date quoted. The undersigned certifies that no Federal, State, County or Municipal Tax is included in the above quoted prices and that none will be added.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



# REQUEST FOR SOLE/SINGLE SOURCE PURCHASE

**DIRECTIONS:**

Complete this form for all purchase requests with a sole/single source vendor. Send to the Purchasing Office before purchasing the item(s) along with the letter from the vendor indicating they are the sole/single supplier. **If over \$34,999.99, attach a copy of the legal ad and place on council**

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Division/Department: \_\_\_\_\_

ITEM DESCRIPTION: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

AMOUNT OF PURCHASE: \$ \_\_\_\_\_

STATE REASON FOR SOLE SOURCE PURCHASE: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Requesting Individual: \_\_\_\_\_

**DIVISION/DEPARTMENT HEAD APPROVAL:**

Name: \_\_\_\_\_ Date: \_\_\_\_\_

COMMENTS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**For Purchasing Office use only:**

Sole/Single Source Letter Attached: Yes / No      Legal Ad Attached: Yes / No

Finance Dates: \_\_\_\_\_ City Council Dates: \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_



CITY OF CHEYENNE CONTRACT PAYMENT REQUEST

DATE: \_\_\_\_\_

PROJECT: \_\_\_\_\_

CITY BID NUMBER: \_\_\_\_\_ CITY CONTRACT NUMBER: \_\_\_\_\_

CITY PROJECT NUMBER: \_\_\_\_\_ CONTRACTOR: \_\_\_\_\_

CONTRACT PAYMENT REQUEST NUMBER: \_\_\_\_\_

For work completed through the date of: \_\_\_\_\_

The present status of the account for this contract is as follows:

Original Contract Amount.....	\$	_____
Net Change by Change Orders to Date .....	\$	_____
Current Contract Amount .....	\$	_____
Total Completed to Date .....	\$	_____
Less 10% Retainage .....	\$	_____
Total Earned Less Retainage .....	\$	_____
Less Previous Payments .....	\$	_____
Total Payment Due .....	\$	_____
Total Retainage Due:.....	\$	_____

**Contractor’s Certification:**

The undersigned Contractor certifies that: (1) all previous progress payments received from the City on account of work done under the Contract referred to above have been applied to discharge Contractor’s legitimate obligations incurred in connection with work covered by prior Contract Payment Request numbered one through \_\_\_\_ inclusive; (2) title of all work, materials and equipment incorporated in said work or otherwise listed in or covered by this Contract Payment Request will pass to Owner at the time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by Bond acceptable to owner indemnifying Owner against such liens, security interest or encumbrance); and (3) all work covered by this Contract Payment Request is in accordance with the Contract Documents and not defective.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

**Payment of the above AMOUNT DUE THIS PAY REQUEST is recommended.**

\_\_\_\_\_  
Project Manager Signature

\_\_\_\_\_  
Print Name and Title

**Authorization by City Representative**

\_\_\_\_\_  
City Representative Signature

\_\_\_\_\_  
Print Name and Title





City of Cheyenne  
2101 O'Neil Avenue  
Cheyenne, WY 82001

### Personal Vehicle Use Request

This form must be completed when requesting authorization to use your *personal vehicle* to attend City business being held outside of Cheyenne, Wyoming.

Date of Request:

Traveler Name:

Department/Division:

**Purpose for requesting use of a personal vehicle: (Car pooling when possible is highly encouraged)**

It is my choice to request to use my personal vehicle to attend a City sanctioned event. I understand that if approved, reimbursement will be for fuel expenses only and that I will be required to submit fuel receipts in order to receive reimbursement.

I am requesting to use my personal vehicle because there are no City vehicles available for my use. I understand that in this circumstance I will be paid mileage based on the current I.R.S. rate, for the use of my personal vehicle. I also understand that I will be required to record beginning and ending miles for accurate payment.

*Please attach a copy of proof of insurance.*

Signature: \_\_\_\_\_  
(Traveler)

Date: \_\_\_\_\_

#### Official Use Only

Approved  Denied

Reason for Denial

Signature: \_\_\_\_\_  
(Department Supervisor)

Date: \_\_\_\_\_



**City of Cheyenne**  
 2101 O'Neil Avenue  
 Cheyenne, WY 82001

**Travel Authorization Request**

This will be issued by the Treasurer's Office when request is received.

**TA #**  
 (To be determined by Treasurer's Office)

Instructions: Complete Section A at time travel is being requested. Complete Section B when Traveler(s) return. Please attach Section A with Section B when returning forms to Room 108.

**Section A**

**Date of Request** 04/16/13  
 (mm/dd/yy)

**Traveler (s)**

Name
John Smith
Betty Lou
Bo Peep

**Division** (If traveler(s) are all from one division, list once)

Budget and Finance
Housing and Community Development

**Purpose of Travel**

To attend very important training.

**Travel Detail:**

Destination:	Washington, DC
Departure Date:	05/06/13
Return Date:	05/08/13

**Primary Mode of Transportation** (Please check one):

City Vehicle	<input type="checkbox"/>
Personal Vehicle (Must attach Personal Vehicle Use Request)	<input type="checkbox"/>
Airfare	<input checked="" type="checkbox"/>

Check here if the traveler(s) will be staying overnight on this trip.

This is for tax purposes.

**Anticipated Expenses**

Registration Fee(s)	\$ 200.00
Airfare	\$ 350.00
Lodging	\$ 65.87
Meals	\$ 100.00
Fuel (City Vehicle. Personal Vehicle if approved)	\$ 20.00
Personal Vehicle - estimated mileage (miles x \$.565)	25.00
Ground Transportation (Bus, Taxi, Shuttle, Train, etc.)	\$ 10.00
Other Costs (Please explain)	\$ 100.00
Other Costs (Please explain)	
<b>Total Anticipated Expenses</b>	<b>\$ 2,225.87</b>

per person for	3	people =	\$ 600.00
per person for	3	people =	\$ 1,050.00
per night for	2	nights =	\$ 131.74
per day for	3	days =	\$ 300.00

miles x 0.565 = \$ 14.13 Mileage is **only** paid when a city vehicle is not available.

"Other Cost" Description.

Baggage Fees
--------------

**Funding Sources and Amounts** (Total City of Cheyenne funding and Total External funding must equal Total Anticipated Expenses):

For City of Cheyenne funding, please list account(s) to be charged:

Fund	Dept	Division	Activity	Object	Amount
001	19	1901	40	21101	\$ 783.92
018	18	1832	44	21101	\$ 391.95
<b>Total City of Cheyenne funding</b>					<b>\$ 1,175.87</b>

External funding sources and amounts:

External Source (list below)	Amount
Some Grant	\$ 1,050.00
<b>Total External funding</b>	
	<b>\$ 1,050.00</b>

Will a City Credit Card be used? YES  NO

If yes, Cardholder Name? Bo Peep

\_\_\_\_\_  
 Traveler's Signature

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
 Mayor (Anticipated Cost Exceeds \$750.00)

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
 Department Supervisor

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
 City Treasurer

\_\_\_\_\_  
 DATE

revised 5/2013





City of Cheyenne  
2101 O'Neil Avenue  
Cheyenne, WY 82001

This column serves 2 purposes - to explain any expenses not already labeled & to separate any unauthorized expenses. See examples entered.

This will be issued by the Treasurer's Office when request is received.

Travel Authorization Expense/Reimbursement Form  
TA # \_\_\_\_\_  
(To be determined by Treasurer's Office)

Instructions: Complete Section A at time travel is being requested. Complete Section B when Traveler(s) return. Please attach Section A with Section B when returning forms to Room 108.

**Section B**  
**TRAVEL SUMMARY**  
Expenses paid for by the City of Cheyenne

Date (mm/dd/yy)	Travel from City(State)/Place		Actual Expenses				Reg. Fee(s)	Fuel	Parking	Other		Tot
	Date	City(State)/Place	Meals	Lodging	Airfare	Rate				Amount		
05/06/13	Cheyenne, WY	Washington, DC	B: 15.00, L: 32.58, D: 50.00	65.87	525.00	600.00					6.50	1.2
05/07/13	Washington, DC	Cheyenne, WY	B: 18.00, L: 36.00, D: 46.75	65.87	525.00	20.00					75.00	1
05/08/13	Washington, DC	Cheyenne, WY	B: 33.00, L: 33.00, D: 50.00									7
Totals			\$ 33.00	\$ 101.58	\$ 146.75	\$ 1,050.00	\$ 600.00	\$ 20.00	\$ -	\$ -	\$ 81.50	\$ 2.1

Mileage Rate: Effective Jan 1, 2013 = \$ .566

Reimbursable expenses paid for by the Traveler(s). (Please do not list any personal expenses)

Date (mm/dd/yy)	Travel from City(State)/Place		Actual Expenses				Mileage		Other		Tot
	Date	City(State)/Place	Meals	Lodging	Airfare	Rate	Miles	Rate	Amount		
05/08/13	Washington, DC	Cheyenne, WY	B: 16.50			0.565	17.50	0.565	9.89	25.00	
Totals			\$ 16.50	\$ -	\$ -	\$ -	\$ -	\$ 9.89	\$ 9.89	\$ 25.00	\$ -

This column serves 2 purposes - to explain any other expenses & to name Traveler(s) to be reimbursed for a particular expense. See examples entered.

PLEASE NOTE: Copies of ORIGINAL receipts must be included with this Expense Detail Report. Receipts MUST include itemized meal receipts.

I certify under the penalty of perjury that the items listed hereon have been received and the account is correct and is approved for payment and agrees to the City Travel Policy.

This section is to be completed by the Treasurer's Office

**Expense Totals:**

1	Total Expenses	\$ 2,215.96
2	Amount to be reimbursed to the City of Cheyenne by the Traveler(s)	\$ (6.50)
3	Less (For External Source Fundings): Amount to be reimbursed to the City of Cheyenne by an External Source	\$ (1,050.00)
4	Net City of Cheyenne Expenses	\$ 1,159.46
5	Amount to be reimbursed to the Traveler(s) by the City of Cheyenne	\$ 51.39

These cells are automatically calculated by entries on this form.

**Method of Payment**

Petty Cash       Check No. \_\_\_\_\_

Reimbursement is LESS than \$25.00.      Reimbursement is MORE than \$25.00.

Audited By: \_\_\_\_\_ Date: \_\_\_\_\_

Vendor No. \_\_\_\_\_ Account Number \_\_\_\_\_ Expense \_\_\_\_\_

Fund \_\_\_\_\_ Dept \_\_\_\_\_ Activity \_\_\_\_\_ Object \_\_\_\_\_

The account(s) that this amount will be expensed to will be broken down by account on Section A of the Travel Form and Traveler(s) to be reimbursed is listed above.





**CLOTHING & FOOTWEAR AGREEMENT**

New employees on a Probation Period will have to reimburse the City for all clothing and footwear purchased by the City if terminated or resigns while on probation. All other employees who resign or are terminated within ninety (90) days of the purchase of clothing or footwear provided by the City, agrees to reimburse the City for the cost of all items purchased within the 90 day period. Final paychecks will be withheld until payment has been received. This agreement may be found in the forms section.

I have read and understand and agree to the procedures and terms of the City of Cheyenne Uniforms, Special Work Clothing and Steel-Toe Footwear policy. If you do not agree to these terms, the employee will be required to purchase their own work clothing and footwear as required to do their job or will be terminated.

\_\_\_\_\_  
Name of Employee

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

This form must be signed every year by the employee, before given permission to purchase any items.

**NOTE: This form must be turned in with the invoice before the invoice is paid.**

**Check List for Disposal of Real Property  
(Land and/or Buildings)**

Prior to the sale, lease or other disposal of real property, the following tasks must be performed:

Description	Attachment	Name/Signature
A land description for the land to be sold, leased or disposed of must be prepared by the City Surveyor. If a land description has been prepared by an independent engineer, surveyor, or other non-City personnel, the land description must be reviewed and approved by the City Surveyor or City Engineer.	Yes. Attach a copy of the description	Approved by:
An ownership and encumbrance report ("O & E Report:) must be obtained from a title insurance company doing business in Cheyenne. The price for an O & E Report is typically \$100.00. The purpose of the O & E report is to confirm that the City actually holds title to the land to be sold, leased or otherwise disposed of, whether the land is subject to reservations, easements, covenants, or other land use restrictions that should be considered by the City prior to the sale, lease or other disposition.	Yes. Attach a copy of the report.	Name of person who got report:
A GIS report for the land to be sold, leased or otherwise disposed of should be prepared for the purpose of identifying sewer mains, water mains, storm sewer mains, storm water detention facilities, drainage easements, utility easements, and other matters which should be considered by the City prior to the sale, lease or other disposition.	Yes. Attach a copy of the report.	Name of person who got report:
A report for the land to be sold, leased or otherwise disposed of should be prepared by the City Clerk and the City Treasurer for the purpose of identifying whether the land is subject to restrictions imposed by prior deeds or other instruments of conveyance, by ordinances or resolutions, or by contractual relationships which may restrict the ability of the City to sell, lease, or dispose of the land. In particular, the report prepared by the City Treasurer should discuss whether the requirements of prior grant agreements restrict the City's ability to sell, lease or dispose of the land.	Yes. Attach a copy of the report.	City Clerk:  City Treasurer:
A report for the land to be sold, leased or other disposed of should be prepared by the Planning Services Department describing all land use restrictions which are applicable to the property under the UDC and other provisions of the Cheyenne City Code	Yes. Attach a copy of the report.	Prepared by:

**Check List for Disposal of Real Property  
(Land and/or Buildings)**

Prior to the sale, lease or other disposal of real property, the following tasks must be performed:

<p>Each Department of City Government, specifically including the Board of Public Utilities, has considered the proposed sale, lease or other disposition of the land. Each Department must either approve the proposed sale, lease, or other disposition of land, state that the Department needs the land for any particular use, or state whether the Department objects to the proposed sale, lease or other disposition for any reason.</p>	<p>See below of all departments.</p>	<p>Sign off and circle approve/needs/or objects. Attach the reason for needing the property or objecting the sale of the property.</p>
--	--------------------------------------	--

BOPU	<p>Approve Needs Objects</p>	
Clerk	<p>Approve Needs Objects</p>	
Engineering	<p>Approve Needs Objects</p>	
Fire	<p>Approve Needs Objects</p>	
Mayor	<p>Approve Needs Objects</p>	
Parks & Recreation	<p>Approve Needs Objects</p>	
Planning/Development	<p>Approve Needs Objects</p>	
Police	<p>Approve Needs Objects</p>	
Public Works	<p>Approve Needs Objects</p>	
Treasurer	<p>Approve Needs Objects</p>	

**BID NUMBER** \_\_\_\_\_

Purchasing will need the following information to put together the  
“construction boilerplate” for your project:

Dept. Contact: Name \_\_\_\_\_ Phone \_\_\_\_\_

Exact title of project as it is to appear on the bidding documents: \_\_\_\_\_  
\_\_\_\_\_

Amount to charge for bidding documents, if any : \$ \_\_\_\_\_

Contractor License(s) required: (list) \_\_\_\_\_  
\_\_\_\_\_

Permit(s) required: (list) \_\_\_\_\_  
\_\_\_\_\_

Contract completion time: \_\_\_\_\_

“Correction Period” (Contractor’s warranty): 1 year [  ] 2 years [  ]

Project site (exact location): \_\_\_\_\_  
\_\_\_\_\_

Is there going to be an Itemized Bid sheet? Yes [  ] No [  ] Please attach if Yes.

Do you want a pre-bid meeting? Yes [  ] No [  ]

Estimated construction cost: \$ \_\_\_\_\_

Funding source(s): \_\_\_\_\_  
\_\_\_\_\_