



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

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Mr. P. Scott Graham
Interim CEO/General Manager
Omnitrans
1700 W. Fifth Street
San Bernardino, CA 92411

JUL 12 2013

Re: FY 2013 FTA Procurement
System Review Final Report

Dear Mr. Graham:

Attached is a copy of the Fiscal Year 2013 Procurement Systems Review (PSR) Final Report of the Omnitrans, which was prepared by our contractor Calyptus Consulting Group, Inc. The review was performed during the period of April 15-18, 2013.

The report analyzes 60 system-wide and individual “elements”, or requirements, as defined in FTA Circular 4220.1F. For each element, a finding of Non-Deficient or Deficient or Not-applicable/Observable is identified. If the finding is deficient, we have provided suggested corrective action recommendations. Omnitrans was found non-deficient in 32 elements and deficient in 22 elements, while six elements were not-applicable/observable. Six suggestions for improving your procurement system have been provided. Upon receipt of this report, we ask that you provide response of corrective actions within the corrective action timeframes identified in the File Summary Report.

FTA is also requesting additional information for the following Elements:

No. 2, “Contract Administration System” and No. 38, “Sole Source If Other Award Is Inadequate” - Please provide the original contract sole source justification documentation and the Board approval.

No. 48, “Cost Plus Percentage of Cost” - Please provide a table of all the change orders that have been paid and are pending. The table should include a description of the change order, total amount, markup percentage and any additional information applicable. Additionally, please identify which change orders were not covered by individual pay items that were already established in your construction contract. FTA will make a Federal participation determination once the documentation request is received and reviewed.

If you have any questions, please do not hesitate to contact Roxana Hernandez, Program Manager, of my staff at (415) 744-2658 or via e-mail at roxana.hernandez@dot.gov.

Sincerely,



Leslie T. Rogers
Regional Administrator

Attachment

cc: Maurice A. Mansion, Treasury Manager, Omnitrans
Jennifer Sims, Director of Procurement, Omnitrans

FEDERAL TRANSIT ADMINISTRATION



FINAL REPORT:

PROCUREMENT SYSTEM
REVIEW OF OMNITRANS

SITE VISIT:

APRIL 15 – APRIL 18, 2013

FINAL REPORT DATE:

JULY 8, 2013



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I. EXECUTIVE SUMMARY

Background

The Federal Transit Administration (FTA) contracted with Calyptus Consulting Group, Inc. (the ‘reviewing contractor’) to review the procurement system used by Omnitrans in the expenditure of grant funds. The review was initiated in part because Omnitrans is undergoing a multimillion dollar Bus Rapid Transit (BRT) project referred to as “sbX.”

The procurement system review process, as indicated on the FTA’s Web site, uses a standardized approach, interview guides, checklists, and reporting framework. This process was applied in its entirety without change for the review of the Omnitrans procurement system.

Briefing and Opening Meeting

The reviewing contractor held a teleconference with the members of the FTA oversight team in the Region 9 office to understand the background for scheduling the Procurement System Review (PSR) for Omnitrans and to review recent audit reports, any past assessments, and information on the current projects.

On April 15, 2013 an opening conference was held at the Omnitrans main office to explain the process to be used during the review. A list of the individuals attending the opening conference can be found in Section III of this report.

Copies of policies and procedures, organization charts and lists of eligible contracts were received prior to the opening conference. Interview guides from staff were completed. Clarifications were made during the on-site review from the Purchasing Director, Project Management Staff, Grants and Finance Staff, Internal Auditor, Legal, and DBE Staff. The focus of interview information and discussions included the review of:

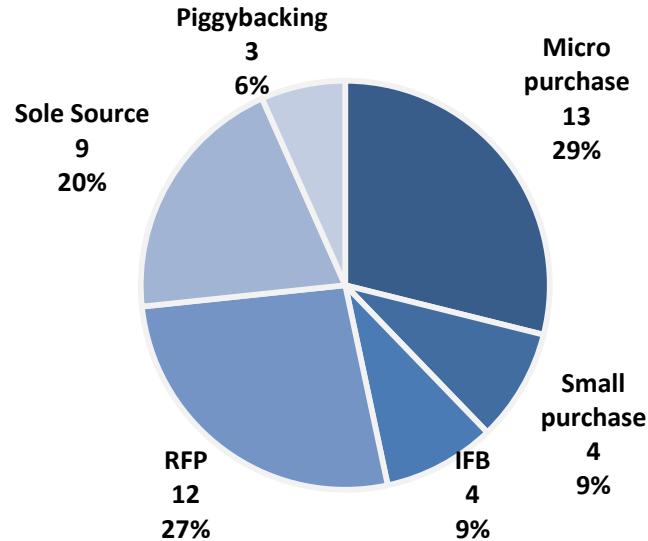
- Policies and Procedures
- Standards of Conduct
- Contract Administration
- Efficient and Economic Purchases
- Organization and Personnel
- Status of Purchasing
- Protests and Legal Issues

Procurements Reviewed

All FTA-funded contracts, including revenue contracts, open during the past 24-month period ending March 31, 2013, were reviewed to assess compliance with [FTA Circular 4220.1F](#) and the Master Agreement.

Forty-five (45) procurements were reviewed. The breakdown is depicted below. This sample included one (1) A&E contract and two (2) construction contracts.

File Count	
	FTA Funded
Micro purchase	13
Small purchase	4
IFB	4
RFP	12
Sole Source	9
Piggybacking	3
A&E	1
Construction	2
Total Files	45



File Review and Closing Meeting

The file review was completed on April 18, 2013, and an Exit Conference was held to formally present the findings of the review to FTA Regional staff and Omnitrans management. Please refer to page 13-14 of this report for the list of Omnitrans personnel present at the Exit Conference.

Results of the Procurement System Review

Omnitrans demonstrated its compliance in a number of key areas required by the Master Agreement and [FTA Circular 4220.1F](#). The grantee was rated not deficient in thirty-two (32) of the elements. Six (6) elements were not applicable or observable. The grantee was deficient in twenty-two (22) of the elements. The reviewing contractor also made six (6) suggestions to improve the Omnitrans procurement system.

The overall findings are summarized as follows:

Areas Not Deficient	32
Areas Deficient	22
Not Applicable/Observable	6
Suggestions	6

The reviewing contractor made an effort to distinguish findings of deficiency between procurements related to the sbX E Street Construction project and purchases related to other transit operations. This breakdown is provided on the next page:

	Not Deficient	Deficient	N/A
sbX Procurements	35	19	6
Non-sbX Procurement	38	16	6

There were nineteen (19) deficiencies that applied to sbX procurements. The deficiencies that did not pertain to the sbX construction project were: fair and reasonable price determinations (micro purchases), piggybacking, and clear and accurate specifications.

There were sixteen (16) deficiencies that applied to procurements that were not directly related to sbX. These six (6) deficiencies included contract administration, cost plus percentage of cost contracts, time and materials contracts, price quotations (small purchases), evaluation of options, and out of scope changes.

Summary of PSR Findings by Element

The File Summary Report on the following pages illustrates the findings by element, and the proposed corrective action timeframes:

No.	Element	Basic Requirement 4220.1F	ND	D	NA	Corrective Action Timeframe
1	Written Standards of Conduct	III, 1.a.b.c.	0	0		
2	Contract Administration System	III, 3.	0	1		90 Days
3	Written Protest Procedures	VII, 1. a. b.	0	0		
4	Pre-Qualification System	VI, 1.c.	0	0	0	
5	System for ensuring most Efficient & Economic Purchase	IV, 1. b. c. e.	0	0		
6	Procurement Policies & Procedures	III, 3.a.	0	0		
7	Independent Cost Estimates	VI, 6.	20	12		30 Days
8	A&E Geographic Preferences	VI, 2. a. (4) (g)	1	0		
9	Unreasonable Qualification Requirements	VI, 2. a. (4) (a)	23	0		
10	Unnecessary Experience and Excessive Bond	VI, 2. a. (4) (b) (e)	25	0	0	
11	Organizational Conflict of Interest	VI, 2. a. (4) (h)	0	0	26	
12	Arbitrary Action	VI, 2. a. (4) (i)	32	0		
13	Brand Name Restrictions	VI, 2. a. (3)	4	2	17	30 Days
14	Geographic Preferences	VI, 2. a. (4)	32	0		
15	Contract Period of Performance Limitations	IV, 2.e.(10)	6	0	26	
16	Written Procurement Selection Procedures	III, 3. a.; VI, 2. e.	10	7		30 Days
17	Solicitation Prequalification Criteria	VI, 1.c.(1)(2)(3)	0	0	17	
18	Award to Responsible Contractors	VI, 8. b.	7	19	0	30 Days
19	Sound and Complete Agreement	III, 3. b.; III, 3.b.	26	0		
20	No Splitting [Micro-purchases]	VI, 3. a.	13	0	0	
21	Fair and Reasonable Price Determination	VI, 3. a.	1	12	0	30 Days
22	Micro-Purchase Davis Bacon	VI, 3. a.	0	0	13	
23	Price Quotations [Small Purchases]	VI, 3. b.	5	1		30 Days
24	Complete Specifications	VI, 2. a.; VI, 3. c.	31	1		30 Days

25	Adequate Competition - Two or Responsible Bidders	VI, 3. c. (b)	14	3		30 Days
26	Firm Fixed Price [Sealed Bid]	VI, 3. c. (1) (c)	4	0		
27	Selection on Price [Sealed Bid]	VI, 3. c. (1) (d)	4	0		
28	Discussion Unnecessary [Sealed Bid]	VI, 3. c. (1) (e)	4	0		
29	Advertise/Publicized	VI, 3. c. (2) (a)	17	0		
30	Adequate Solicitation	VI, 3. c. (2) (b)	17	0		
31	Sufficient Bid Time [Sealed Bid]	VI, 3.c.(2)(d)	4	0		
32	Bid Opening [Sealed Bid]	VI, 3.c.(2)(e)	1	3		30 Days
33	Responsiveness [Sealed Bid]	VI, 3.c.(2)(f)	4	0		
34	Lowest Bid [Sealed Bid]	VI, 3.c.(2)(f)	0	0	4	
35	Rejecting Bids [Sealed Bid]	VI, 3.c.(2)(g)	2	0	2	
36	Evaluation [RFP]	3. d. (2) (d)	8	5		30 Days
37	Price and Other Factors [RFP]	3. d. (2) (e)	13	0		
38	Sole Source if Other Award is Infeasible	VI, 3. h.	2	7		30 Days
39	Cost Analysis Required [Sole Source]	VI, 6. a.	1	8		30 Days
40	Evaluation of Options	VI, 7. b.	5	2	19	30 Days
41	Cost or Price Analysis	VI, 6.	13	10		30 Days
42	Written Record of Procurement History	III, 3. d	22	9		30 Days
43	Exercise of Options	V, 7. a. (1) (a) (b)	0	3	23	30 Days
44	Out of Scope Changes	VI, 3. h. (3) (c)	0	2	24	30 Days
45	Advance Payments	IV, 2. b. (4) (b) 1, 2	26	0		
46	Progress Payments	IV, 2.b.(5)(c)	2	0	24	
47	Time and Materials Contracts	VI, 2.c.(2)(b)	2	2	22	30 Days
48	Cost Plus Percentage of Cost	VI, 2.c.(2)(a)	25	1		30 Days
49	Liquidated Damages Provisions	IV, 2.b.(6)(b) 1)	7	0	19	
50	Piggybacking	V, 7. a. (2)	0	3		30 Days
51	Qualifications Exclude Price [A&E]	VI, 3.f.(3)	1	0		
52	Serial Price Negotiations [A&E]	VI, 3.f.(3)	1	0		
53	Bid Security [Construction over \$100,000]	IV, 2.h.(1)(a)]	2	0	0	
54	Performance Security [Const. over \$100,000]	IV, 2.h.(1)(b)	2	0	0	
55	Payment Security [Construction over \$100,000]	IV, 2.h.(1)(c)	2	0	0	
56	Clauses	IV, 2.	10	22	0	30 Days
57	Pre-Award Review - Rail	49 C.F.R. 663	0	0	0	
58	Post-Award Review - Rail	49 C.F.R. 663	0	0	0	
59	Pre-Award Review - Bus	49 C.F.R. 663	2	0	0	
60	Post-Award Review - Bus	49 C.F.R. 663	1	0	0	

The balance of this report is comprised of the description of the grantee, the methodology used, the findings of the review and the corrective action required. Omnitrans must report the status of its efforts on FTA corrective actions at least quarterly until those elements of the procurement system are brought back into compliance.

II. DESCRIPTION OF THE GRANTEE

Background

Established in 1976 through a joint powers agreement, Omnitrans is a public transit agency serving the San Bernardino Valley with 28 fixed bus routes as well as OmniLink, a general public dial-a-ride service, and Access, a paratransit service for persons with disabilities. Omnitrans currently operates a fleet of 161 transit coaches and 106 OmniGo, Omnilink, and Access vehicles. A large portion of the fleet is composed of CNG-powered vehicles.

Omnitrans carries approximately 15 million passengers each year throughout its 480-square mile service area, covering 15 cities and portions of the unincorporated areas of San Bernardino County. Major destinations within the Omnitrans service area include transportation centers, medical centers, educational facilities, shopping malls, business parks, and community centers.

Omnitrans has several major initiatives underway including the procurement of 20 CNG buses, the construction of a new transit center in San Bernardino, and the sbX E-Street Corridor Bus Rapid Transit Project. sbX is an express service to be constructed in the Inland Empire that will utilize 60-foot buses powered by compressed natural gas and will travel a 15.7-mile corridor between northern San Bernardino and Loma Linda. sbX will include 16 passenger stations at key university, government, business, entertainment and medical centers, as well as four park-and-ride facilities. The sbX service is one component of a larger, intermodal public transit system that will serve the San Bernardino Valley.

The sbX project is fully funded. Of the total, 96% comes from federal, state and county funds that can only be used on designated transit projects. The cities of San Bernardino and Loma Linda are contributing a combined 4% through in-kind contributions such as permit fee waivers, use of facilities owned by the cities, and spaces for the Civic Center park-and-ride. The sbX BRT line is expected to start operation in early 2014.

Organization and Procurement System

The Omnitrans Purchasing Department reports into Finance and is headed by a Director of Procurement who oversees a group of twenty-one (21) individuals including twelve (12) materials management/parts buyers, seven (7) contract specialists, and administrative personnel.

The Omnitrans organization is headed by a General Manager and CEO. A Finance Manager and a Treasury Manager have direct responsibility for grant management. Please see Appendix A for the Omnitrans Organizational Chart.

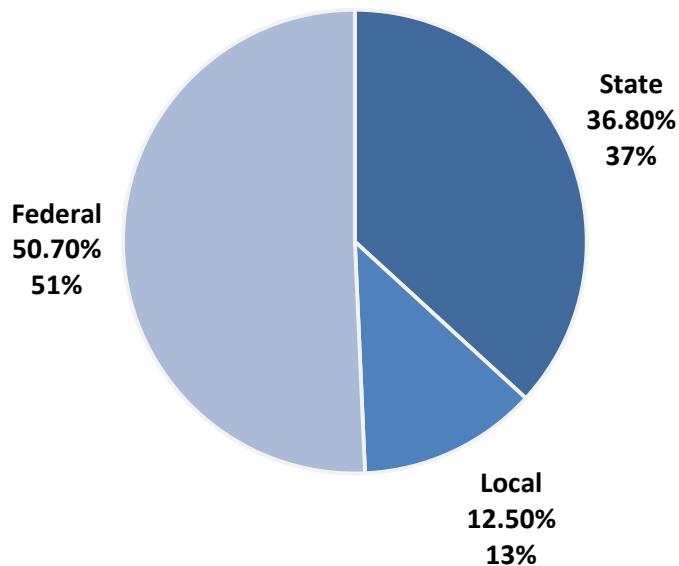
Omnitrans observes the following procurement thresholds and corresponding approvals:

Threshold	Dollar Range	Management Approvals Required
Micro Purchase	\$3,000 and less	None
Mini Procurement	\$3,000.01 - \$25,000	CEO/General Manager
Small Procurement	\$25,000.01 - \$100,000	CEO/General Manager, Board of Directors
Formal Procurement	Greater than \$100,000	CEO/General Manager, Board of Directors

These procurement thresholds align with federal procurement thresholds. The “mini-procurement” category follows all small purchase procedures and only differs in that approvals can be gained from the CEO without going to the Board of Directors.

Funding and Revenue Sources

Omnitrans receives funding from the State of California and from local and federal sources. The fiscal year 2012 capital budget was \$33,453,320, with the sources of government funding as follows:



Revenue generated from passenger fares in FY 2012 was \$14,536,931 and advertising revenue was \$805,904.

Disadvantaged Business Enterprise (DBE) Program

Omnitrans has established a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 CFR Part 26. There is an overall agency DBE Race Neutral goal of 8.4 percent. DBE compliance is monitored by outside construction management firms for construction contracts such as the sbX project. Contractors submit monthly report and the data is submitted to FTA quarterly through TEAM.

Attorney

The Omnitrans Attorney is primarily involved in reviewing all contracts requiring approval from the Board of Directors and developing general/federal terms and conditions. There have been three (3) protests in the past two years, none of which have led to litigation. One (1) of these protests pertained to an FTA-funded procurement for bus painting and wrapping services procurement, whereas the other two (2) protested procurements were not FTA-funded. The protest for bus painting and wrapping services was ultimately denied.

sbX Project Management

The Reviewing Contractor evaluated all of the sbX related procurements, starting with the initial development phase through preliminary engineering and design, and including the design and construction of the VMF facility modifications. The review included rolling stock procurements for 60' articulated vehicles, methane detection consulting, and right-of-way acquisition support. The full list of sbX procurements is as follows:

1. Development Phase/environmental clearance, preliminary engineering and final design (A&E)
2. 60' Articulated Vehicles
3. Right of way acquisition support consulting services
4. VMF Facility Modifications Engineering (A&E)
5. VMF Construction
6. E Street Corridor Construction
7. Construction Management Services (A&E) plus sample of 52 change orders
8. Project Schedule, utility, and environmental support consulting services
9. Methane Detection system consulting services

Summary of results of findings of deficiency has been included in this report, along with the comparison of sbX procurements versus all other procurements reviewed.

III. SCOPE AND METHODOLOGY

The procurement system review process, as indicated on the FTA's website, uses a standardized approach, interview guides, checklists, and reporting framework. This process was applied in its entirety without change for the review of the Omnitrans procurement system.

Entrance Conference

The following representatives of Omnitrans and Calyptus participated in the Entrance Conference on April 15, 2013:

FTA/Reviewing Contractor:

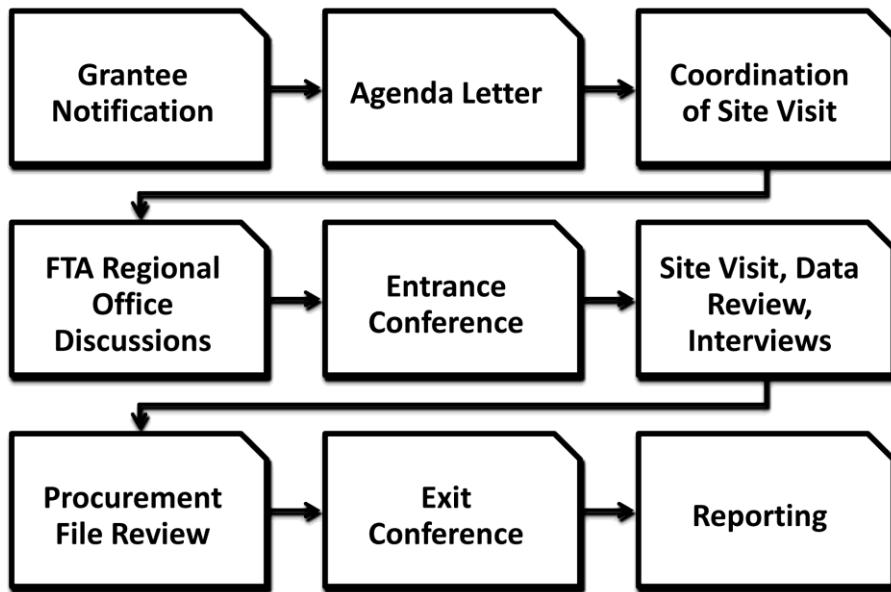
Name	Title	Organization	Telephone
George Harris	President	Calyptus	617-577-0041
Bryan O'Mahony	Analyst	Calyptus	617-577-0041
Nick Harris	Analyst	Calyptus	617-577-0041

Omnitrans:

Name	Title	Organization	Telephone
Milind Joshi	sbX Program Manager	Omnitrans	909-963-5235
Eugenia Pinheiro	Contracts Manager	Omnitrans	909-379-7198
Robert Miller	CFO	Omnitrans	909-379-7288
Maurice Mansion	Treasury Manager	Omnitrans	909-379-7169
Marge Ewing	Director of HR	Omnitrans	909-379-7261
Alex Chen	Interim Director of IT	Omnitrans	909-379-9295
Milo Victoria	CEO	Omnitrans	909-379-7112
Donald Walker	Finance Director	Omnitrans	909-379-1151
Jennifer Sims	Director of Procurement	Omnitrans	909-379-7203
Wendy Williams	Director of Marketing	Omnitrans	909-379-1151
Jack Dooley	Director of Maintenance	Omnitrans	909-379-7183
Rohan Kuruppa	Director of Planning	Omnitrans	909-379-7251

The purpose of the entrance conference was to provide information on the sequence of activities for the review, as noted in the flowchart on the following page:

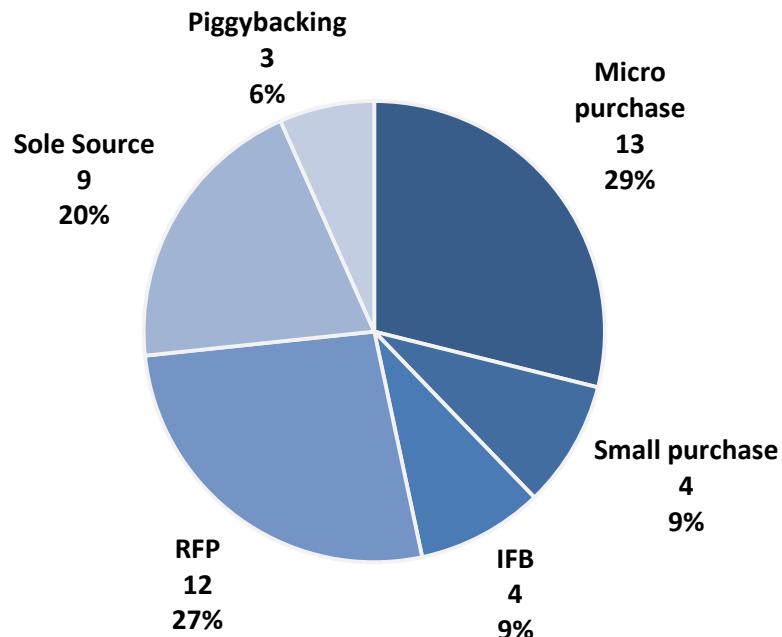
FTA PROCUREMENT SYSTEM REVIEW PROCESS



Using the questionnaires from the FTA's PSR guide, individual responses were received from executive management, finance, grants, legal, and procurement staff. In addition, information such as organization charts and policies and procedures were collected. The interviews and documentation were used to establish the framework for the file review.

Based on the data received and the assessment of the grantee's written policies and procedures, the reviewing contractor evaluated the number and types of contracts likely to be examined.

The reviewing contractors reviewed procurements in the Omnitrans offices. A total of forty-five (45) procurements were reviewed, detailed by procurement method as follows:



An exit conference was held on April 18, 2013 to brief Omnitrans and FTA on the results of the procurement system review. The following individuals attended the exit conference:

FTA/Reviewing Contractor:

Name	Title	Organization	Contact
Bernardo Bustamante	Director, Program Management	FTA	415-744-3113
Roxana Hernandez	Transportation Program Specialist	FTA	415-744-2658
George Harris	President	Calyptus	617-577-0041
Bryan O'Mahony	Analyst	Calyptus	617-577-0041
Nick Harris	Analyst	Calyptus	617-577-0041

Omnitrans:

Name	Title	Organization	Contact
Milind Joshi	sbX Program Manager	Omnitrans	909-963-5235
Eugenia Pinheiro	Contracts Manager	Omnitrans	909-379-7198
Robert Miller	CFO	Omnitrans	909-379-7288
Maurice Mansion	Treasury Manager	Omnitrans	909-379-7169
Marge Ewing	Director of HR	Omnitrans	909-379-7261
Alex Chen	Interim Director of IT	Omnitrans	909-379-9295
Milo Victoria	CEO	Omnitrans	909-379-7112
Donald Walker	Finance Director	Omnitrans	909-379-1151
Jennifer Sims	Director of Procurement	Omnitrans	909-379-7203
Wendy Williams	Director of Marketing	Omnitrans	909-379-1151
Jack Dooley	Director of Maintenance	Omnitrans	909-379-7183
Rohan Kuruppa	Director of Planning	Omnitrans	909-379-7251
Joanne Cook	Contract Administrator	Omnitrans	909-379-7198
Dennice Reygoza	Sr. Contract Administrator	Omnitrans	909-963-5244
Alesia Atkinson	Contract Administrator	Omnitrans	909-379-7314
Krystal Turner	Contract Review Analyst	Omnitrans	909-379-7202
Christine Van Matre	Contract Administrator	Omnitrans	909-379-7122
Carol Angir	Admin Secretary	Omnitrans	909-379-7111
Vicki Osborne	Assistant to CEO	Omnitrans	909-379-7110
Oscar Tostado	Maintenance Manager	Omnitrans	909-379-7483

Brenda Rosas	Safety Specialist	Omnitrans	909-379-7248
Scott Graham	Operations Director	Omnitrans	909-379-7211

The overall findings are summarized as follows:

Areas Not Deficient	32
Areas Deficient	22
Not Applicable/Observable	6
Suggestions	6

The requirements and the detailed information comprising these findings make up the balance of the report. The following sections will cover areas not deficient with FTA and Federal Requirements, findings of deficiency with FTA and Federal Requirements, and suggestions for improving Omnitrans' procurement system.

OmniTrans Response to the Draft Report

OmniTrans reviewed the Draft Report and submitted a response on June 4, 2013. Specific comments from the grantee have been incorporated into the deficiency portion of this report and the response is included in its entirety as Appendix Q.

IV. AREAS NOT DEFICIENT OR NOT APPLICABLE IN RELATION TO FTA AND FEDERAL REQUIREMENTS

1. Written Standards of Conduct

Basic Requirement: Chapter III, Section 1 (a)(b)(c) of [FTA Circular 4220.1F](#) requires that grantees maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. The section also addresses potential conflicts, solicitation and acceptance of gifts, penalties and sanctions.

Discussion: Omnitrans has adequate written standards of conduct provided for in Policy 1050 (Standards of Conduct and Conflict of Interest) of the Procurement Policies Manual. These standards of conduct contain provisions for gratuities, code of ethics and conflicts of interest, and applicable investigations and penalties.

3. Written Protest Procedures

Basic Requirement: Chapter VII, Section 1(a) and (b) of [FTA C 4220.1F](#) requires that grantees have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding protests to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.

Discussion: Omnitrans has included protest procedures in its procurement manual which state that protests must be in writing and that FTA will immediately be notified when it receives a third party contract protest for any procurement funded by the FTA. These procedures also state that Omnitrans will pursue administrative remedies to resolve protests.

4. Pre-Qualification System

Basic Requirement: Chapter VI, Section 1 (c) of [FTA C 4220.1F](#) states that grantees may prequalify people, firms, or products for participation in procurements provided that:

- Lists used in acquiring property and services are current;
- Lists include enough qualified sources to ensure maximum full and open competition;
- The recipient permits potential bidders or proposer to qualify during the solicitation period (from the issuance of the solicitation to its closing date), as set forth in the Common Grant Rule for governmental recipients. Evaluations for prequalification, however, need not be accelerated or truncated. FTA does not require a recipient to hold a particular solicitation open to accommodate a potential bidder or proposer that submits a person, firm, or product for approval before or during that solicitation.

Discussion: As Omnitrans does not utilize a pre-qualification system, this element was not observed.

5. System for Ensuring Most Efficient and Economic Purchase

Basic Requirement: Chapter IV, Section 1(b) of [FTA C 4220.1F](#) requires that grantee procedures provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Ensuring an economic purchase could include breaking out or combining purchases, or using annual

contracts. Also lease versus buy analyses are required for applicable purchases to ensure the most economical approach.

Discussion: Omnitrans has a system of planning and oversight of purchases and approval processes are in place for each purchase threshold. A written lease versus buy policy is in place, as well as procedures for market research to ensure the most efficient and economic purchase. A review of micro purchases found that there are no instances of splitting procurements to avoid small purchase threshold requirements.

6. Procurement Policies and Procedures

Basic Requirement: Chapter III, Section 3(a) of [FTA C 4220.1F](#) requires that grantees and subgrantees use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in 4220.1F.

Discussion: The grantee has a detailed policy and procedure manual approved by the Board of Directors and the agency CEO that provides coverage of Federal, State, and local requirements. This manual was recently reviewed by the Procurement Director to ensure that it is reflective of best practices and FTA Circular 4220.1F. The manual is currently under review to improve clarity and usability, and the Reviewing Contractor has provided suggestions to assist with this effort in Section VI of this report.

8. A & E Geographic Preferences

Basic Requirement: Chapter VI, Section 2(a)(4)(g) of [FTA Circular 4220.1F](#) states that geographic location may be a selection criterion for A&E services if “an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.”

Discussion: The single A&E procurement reviewed for this requirement was found to be not deficient.

9. Unreasonable Qualification Requirements

Basic Requirement: Chapter VI, Section 2(a)(4)(a) of [FTA C 4220.1F](#) indicates that unreasonable requirements placed on firms in order for them to qualify to do business are considered to be restrictive of competition.

Discussion: Of the twenty-three (23) procurements reviewed for this requirement, none were found to be deficient.

10. Unnecessary Experience and Excessive Bonding

Basic Requirement: Chapter VI, Section 2.a (4) (e) of [FTA C 4220.1F](#) and BPPM 8.2 state that unnecessary experience and excessive bonding requirements are considered to be restrictive of competition.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, no deficiencies were found.

11. Organizational Conflict of Interest

Basic Requirement: Chapter VI, Section 2(a)(4)(h) of [FTA C 4220.1F](#) states that an organizational conflict of interest is considered to be restrictive of competition. An organizational conflict of interest exists if:

- Because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice;
- A contractor's objectivity in performing the contract work is or might be otherwise impaired; or
- A contractor has an unfair competitive advantage.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, none were found to have the potential for an organizational conflict of interest and as such all were not applicable to this element.

12. Arbitrary Action

Basic Requirement: Chapter VI, Section 2(a)(4)(j) of [FTA C 4220.1F](#) indicates that any arbitrary action in the procurement process is considered to be restrictive of competition. Proper file documentation can help evaluate whether or not an arbitrary action occurred.

Discussion: Of the thirty-two (32) procurements reviewed for this requirement, all were found to be not deficient and no cases of arbitrary action were identified.

14. Geographic Preferences

Basic Requirement: Chapter VI, Section 2(a)(4)(g) of [FTA C 4220.1F](#) requires that grantees conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

Discussion: Of the thirty-two (32) procurements reviewed for this requirement, all were found to be not deficient and no geographical preferences were present in solicitations.

15. Contract Term Limitation

Basic Requirement: Chapter IV, Section 2(e)(10) of [FTA C 4220.1F](#) requires that grantees do not enter into any contract for rolling stock and replacement parts with a period of performance exceeding five (5) years inclusive of options. This promotes competition and effective contract management.

Discussion: Of the thirty-two (32) procurements reviewed for this requirement, six (6) were found to be not deficient and twenty-six (26) were found to be not applicable as they were not for rolling stock or replacement parts.

17. Solicitation Pre-Qualification Criteria

Basic Requirement: Chapter VI, Section 1(c)(1), (2), and (3) of [FTA C 4220.1F](#) requires that:

- Lists of prequalified persons, firms, or products that are used in acquiring goods and services must be current and include enough qualified sources to ensure maximum full and open competition.
- The process shall not preclude potential bidders from qualifying during the solicitation period.

Discussion: Of the seventeen (17) procurements reviewed for this requirement, none were applicable as the grantee does not maintain a pre-qualification system.

19. Sound and Complete Agreement

Basic Requirement: Chapter III, Section 3(b) of [FTA C 4220.1F](#) requires that all contracts include provisions to define a sound and complete agreement. It should include proper specifications that allow for administrative, contractual, termination and legal remedies.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, none were found to be deficient.

20. No Splitting [Micro-Purchases]

Basic Requirement: Chapter VI, Section 3(a)(2)(b) of [FTA C 4220.1F](#) indicates that micro-purchases are those purchases under \$3,000. Micro-purchases requirements follow these guidelines:

- May be made without obtaining competitive quotations.
- There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition.
- Document that the price is fair and reasonable and how this determination was derived.

Discussion: Of the thirteen (13) micro-purchases reviewed for this requirement, none were found to be deficient.

22. Micro-Purchase Davis Bacon

Basic Requirement: Chapter VI, Section 3(a)(1) of [FTA C 4220.1F](#) indicates that Davis-Bacon prevailing wage and hour restrictions apply to construction contracts exceeding \$2,000.

Discussion: Of the thirteen (13) procurements reviewed for this requirement, none were found to be applicable.

26. Firm Fixed Price [Sealed Bid]

Basic Requirement: Chapter VI, Section 3(c)(1)(c) of [FTA C 4220.1F](#) indicates that the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

Discussion: Of the four (4) procurements reviewed for this requirement, none were found to be deficient.

27. Selection on Price [Sealed Bid]

Basic Requirement: Chapter VI, Section 3(c)(1)(d) of [FTA C 4220.1F](#) indicates that the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

Discussion: Of the four (4) procurements reviewed for this requirement, none were found to be deficient.

28. Discussion Unnecessary [Sealed Bid]

Basic Requirement: Chapter VI, Section 3(c)(1)(e) of [FTA C 4220.1F](#) indicates that the sealed bid method of procurement is appropriate when no discussion with bidders is needed.

Discussion: Of the four (4) procurements reviewed for this requirement, none were found to be deficient.

29. Advertised/Publicized

Basic Requirement: Chapter VI, Section 3(c)(2)(a) of [FTA C 4220.1F](#) requires that the invitation for bids be publicly advertised and that bids be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids.

Discussion: Of the seventeen (17) procurements reviewed for this requirement, none were found to be deficient.

30. Adequate Number of Sources Solicited

Basic Requirement: Chapter VI, Section 3(c)(2)(b) of [FTA C 4220.1F](#) requires that proposals are solicited from an adequate number of qualified sources and RFPs are publicized.

Discussion: Of the seventeen (17) procurements reviewed for this requirement, none were found to be deficient.

31. Sufficient Bid Time [Sealed Bid]

Basic Requirement: Chapter VI, Section 3(c)(2)(d) of [FTA C 4220.1F](#) requires that the invitation for bids are publicly advertised and bids are solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids.

Discussion: Of the four (4) procurements reviewed for this requirement, none were found to be deficient.

33. Responsiveness [Sealed Bid]

Basic Requirement: Chapter VI, Section 3(c)(2)(f) of [FTA C 4220.1F](#) indicates that a firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.

A responsive bidder is a bidder who responds to the requirements of the solicitation. Responsiveness is a fairly objective concept and is ascertainable at the time of bid opening. Requiring strict responsiveness enables bidders to stand on equal footing and maintains the integrity of the sealed bid system.

Discussion: Of the four (4) procurements reviewed for this requirement, none were found to be deficient.

34. Lowest Bid [Sealed Bid]

Basic Requirement: Chapter VI, Section 3(c)(2)(f) of [FTA C 4220.1F](#) requires that bidding documents specify the factors, such as discounts, transportation costs, and life cycle costs that will be considered in determining which bid was lowest. The grantee is thus obliged to review lowest total cost when awarding on low price, if the aspects of this type of evaluation were specified in the solicitation.

Discussion: Of the four (4) procurements reviewed for this requirement, all were found to be not applicable.

35. Rejecting Bids [Sealed Bid]

Basic Requirement: Section 9(c)(2)(e) of FTA Circular 4220.1E, states that “any or all bids may be rejected if there is a sound documented business reason.” Reasons for possible bid rejection include lack of responsiveness to the solicitation and lack of responsibility of the offeror.

Chapter VI, Section 3.c (2)(g) of [FTA C 4220.1F](#) indicates that any or all bids may be rejected if there is a sound documented business reason.

Discussion: Of the four (4) procurements reviewed, two (2) were found to be not deficient and two (2) were not applicable.

37. Price and Other Factors [RFP]

Basic Requirement: Chapter VI, Section 3(d)(2)(e) of [FTA C 4220.1F](#) requires that awards be made to the firm whose proposal is most advantageous to the grantee's program with price and other factors considered. Grantees may award to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the “best value.” “Best value” language must be in the solicitation.

Discussion: Of the thirteen (13) procurements reviewed for this requirement, none were found to be deficient.

45. Advance Payments

Basic Requirement: Chapter IV, Section 2.b (5)(b) of [FTA C 4220.1F](#) indicates that FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, none were found to be deficient.

46. Progress Payments

Basic Requirement: Chapter IV, Section 2.b. (5) (c) of [FTA C 4220.1F](#) indicates that progress payments are allowed if:

- 1) They are only made to the contractor for costs incurred in the performance of the contract.
- 2) Adequate security is obtained (such as taking title, letter of credit or equivalent means)

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, two (2) were found to be not deficient and twenty-four were not applicable.

49. Liquidated Damages Provisions

Basic Requirement: Chapter IV, Section 2(b)(6)(b)(1) of [FTA C 4220.1F](#) indicates that grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine. In addition, the assessment for damages shall be at a specific rate per day for each day of the overrun in contract time. The rate must be pre-determined and specified in the third party contract.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, seven (7) were found to be not deficient and nineteen were not applicable.

51. Qualifications Exclude Price [A & E]

Basic Requirement: Chapter VI, Section 3(f)(3)(b) of [FTA C 4220.1F](#) indicates that qualifications-based competitive proposal procedures require that:

- 1) An offeror's qualifications be evaluated
- 2) Price be excluded as an evaluation factor

Discussion: The single A&E procurement reviewed for this requirement was found to be not deficient.

52. Serial Price Negotiations [A&E]

Basic Requirement: Chapter VI, Section 3(f)(3)(d) of [FTA C 4220.1F](#) indicates that:

- Negotiations be conducted with only the most qualified offeror
- Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

Discussion: The single A&E procurement reviewed for this requirement was found to be not deficient.

53. Bid Guarantee [Construction over \$100,000]

Basic Requirement: Chapter IV, Section 2(h)(1)(a) of [FTA C 4220.1F](#) requires that the Bid Security:

- Equal five (5) percent of the bid price.
- Firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will execute contractual documents as may be required within the time specified.

Discussion: The two (2) construction contracts reviewed for this requirement were found to be not deficient.

54. Performance Bond [Construction over \$100,000]

Basic Requirement: Chapter IV, Section 2(h)(1)(b) of [FTA C 4220.1F](#) requires that the Performance Security:

- Is executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract;
- Amount is equal to 100 percent of the contract price.

Discussion: The two (2) construction contracts reviewed for this requirement were found to be not deficient.

55. Payment Bond [Construction over \$100,000]

Basic Requirement: Chapter IV, Section 2(h)(1)(c) of [FTA C 4220.1F](#) requires that the Payment Security:

- Assures payment of all persons supplying labor and material.
- Includes required amounts as follows:
 - 1) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - 2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - 3) Two and a half million dollars if the contract price is more than \$5 million.

Discussion: The two (2) construction contracts reviewed for this requirement were found to be not deficient.

Buy America (Pre-Award and Post-Award Review)

In terms of Buy America requirements relating to reviews of rolling stock, two (2) bus procurements were analyzed and found to be not deficient for pre-award reviews. One (1) of these bus procurements was reviewed and found not deficient for post-award reviews, whereas the other was not evaluated for post-award review as the vehicles had not yet been delivered.

V. FINDINGS OF DEFICIENCY IN FTA AND FEDERAL REQUIREMENTS

2. Contract Administration System

Basic Requirement: Chapter III, Section 3 of [FTA C 4220.1F](#) requires that grantees maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Discussion: The contract administration system was found to be deficient due to multiple concerns in this area based on procurements related to the Omnitrans sbX E Street Corridor Bus Rapid Transit (BRT) Project. For example, a change order for \$400,000 pertaining to this project was not evaluated appropriately, and water channeling work was conducted without adherence to procurement procedures such as developing an independent cost estimate. Furthermore, a staff augmentation contract originally awarded for \$99,000 was allowed to escalate to \$539,000, indicating a lack of control and contract management.

Best Practices: Timely execution of a definitive contract and up-to-date revisions to the contract are important to ensure control over contractor performance. Prompt and accurate documentation of contract changes is vital to the equitable settlement and close-out of the contract. The FTA recommends that contract administration files routinely contain the following documentation:

- Executed contract and notice of award;
- Basis of award;
- Cost and price analysis;
- Board of Director approvals;
- History of the procurement;
- Approvals or disapprovals of waivers and deviations;
- Modifications and changes, including rationale for the change, determinations regarding their scope, and cost/price analysis of any price increases or decreases.

Implementing a central contract administration and management function will ensure improved management of contractor performance.

The following planning process should be followed to ensure an effective Contract Administration System (See Appendix B for details):

1. Determine the required level of contract surveillance
2. Determine what contract administration functions (if any) will be delegated
3. Delegate contract administration as applicable
4. Develop a contract administration plan
5. Identify qualified personnel (as authorized and necessary) to represent the Contracting Officer in administering contract requirements

Corrective Action: Administration of various contracts for the sbX E Street Corridor BRT Project, including the administration of the staff augmentation services contract, failed to meet the requirements of FTA C 4220.1F, Chapter III, Section 3, related to contract administration systems. Omnitrans must update policies and procedures to ensure that adequate controls are in place for contract management and that all change orders, options periods, and modifications are adequately evaluated. Training must be conducted with staff on these requirements and changes in the procurement system must be verified within ninety (90) days from the date of the final report.

OmniTrans Response [Excerpted]: *Omnitrans respectfully disagrees that these change orders indicate the absence of a contract administration system that “ensures that contractors perform in accordance with the terms and conditions, and specifications of their contracts or purchase orders.” There is no evidence that suggests that the contractors in question have failed to perform.*

Change order (CCO #32) was issued to provide a contractual mechanism to expedite the processing of time sensitive field directives for electrical/utility, civil, station, and landscape/irrigation work as directed by the Resident Engineer to avoid incurring additional costs and/or delays to the project. A ROM (rough order of magnitude) was received, a sole source justification obtained and reviewed. This change order was processed to increase controls and avoid costly ratifications. The recommendation and business justification provided by the project team was evaluated and determined to be within scope.

The water channeling work noted on the Draft Report as being “conducted without adherence to procurement procedures such as developing an independent cost estimate” is addressed under Element 7 – Independent Cost Estimates.

Omnitrans respectfully disagrees that Contract IPMO12-23 to provide staff augmentation services was “allowed to escalate to \$539,000, indicating a lack of control and contract management.” Omnitrans considered the augmentation services to be a small procurement and utilized the FTA’s small purchase procedures accordingly. Staff solicited proposals from three (3) qualified firms. Supporting documentation was provided in the file to support Omnitrans’ decision to award to the most qualified firm. The Board awarded an agreement to the highest qualified firm on May 2, 2012, in an amount not to exceed \$90,000 plus a 10% contingency of \$9,000. Procurement correctly deemed IPMO12-23 Amendment No. 2 to be out of scope with the original small procurement and resulting contract, illustrating that Omnitrans’ Procurement System does have adequate controls were in place. Amendment No. 2 was processed as a sole source procurement and approved by the Board on January 9, 2013.

With the Omnitrans’ sbX E Street Corridor Bus Rapid Transit (BRT) Project on a tight schedule, terminating the full agreement with APSI will have an adverse effect on completing the project on time, within budget. With FTA’s concurrence, Omnitrans proposes continued utilization of APSI for scheduling and environmental services which are very critical at this juncture; Omnitrans will terminate the utility coordination services component of the APSI agreement; and issue an RFP for continued utility coordination support through project completion.

Reviewing Contractor’s Response: The Contract Administration compliance element of the Procurement System Review takes into consideration both policy and practice. Though OmniTrans policies and procedures provided for coverage of contract administration functions such as change orders, options, and closeouts, the Reviewing Contractor made the determination that these procedures were not being consistently followed in procurement actions and will therefore require revision and training of staff.

OmniTrans disagreed with the individual deficiencies contributing to this finding and expressed concerns regarding the evaluation of contract administration practices related to the procurements for staff augmentation services, water channeling work, and a change order for \$400,000 related to the sbX project. These concerns are addressed below.

- The change orders noted by OmniTrans in their response remain deficient. Evidence has not been provided that an adequate independent cost estimate was conducted for the water channeling work and there is not sufficient justification that Change Order #32 for \$400,000 was within scope. Creating a not-to-exceed dollar value for contract changes did not provide the controls as required by OmniTrans procedures, and did not ensure that within-work scope evaluation and cost analysis can occur on an individual change basis.
- The staff augmentation services contract (Contract IPMO12-23) was set in place as a Time and Materials (T&M) type contract, which is the contract type with the highest risk to the government. There was no rationale provided that explained the reasoning for selecting this type of contract, there were no cost and price analyses performed, and the independent cost estimate was inadequate without a breakdown of hourly rates. These issues indicate a lack of effort to understand the true scope and cost of the contract. Ultimately, the contract was awarded for the amount of \$99,000 as a small purchase with limited competition, and was allowed to escalate over 500% of that initial value. OmniTrans has not provided sufficient evidence of sole source documentation that adequately justifies the escalation of contract costs and that demonstrates that at least one of the five (5) conditions for the use of the sole source method was met per FTA Circular 4220.1F. Furthermore, it is irrelevant that the Board approved the change order as it was out of scope and did not comply with FTA requirements. Lastly, what was lacking in OmniTrans' evaluation was the availability of competition to continue with the work. The market for these types of services is fairly substantial in California and elsewhere.

Policies and procedures should be reviewed to ensure adequate coverage of effective contract administration practices, staff must be trained on contract administration requirements, and compliance must be verified within ninety (90) days from the date of the final report.

7. Independent Cost Estimates

Basic Requirement: Chapter VI, Section 6 of [FTA C 4220.1F](#) requires that: "... in connection with every procurement action ... grantees must make independent estimates before receiving bids or proposals." Establishing a cost estimate in advance of the offer using a method independent from the perspective of offerors ensures a clear basis for analysis of cost or price, and provides essential procurement and financial planning information. Independent cost estimates are made by qualified engineering and functional staff who have first-hand knowledge of the commodity or service being purchased. The cost estimate is developed based on product knowledge, experience, and market status, and is used in performing price and cost analysis.

Discussion: Of the thirty-two (32) procurements reviewed, twelve (12) were found to be deficient and twenty (20) were not deficient. The deficiencies stemmed from a range of issues including undated estimates, budgeted amounts being used as the estimate, and insufficient detail or supporting analysis. The deficiencies in this element pertained to sole source and RFP procurements.

Best Practices: Best Practices for obtaining independent cost estimates include:

-
- Estimates are received from design firm or in-house technical personnel for construction work,
 - Published price lists or past pricing with inflation factors are analyzed, and
 - Independent third-party staff member (not impacted by final procurement) develops these estimates.

A template for developing Independent Cost Estimates is provided in Appendix C.

Corrective Action: OmniTrans already has coverage of independent cost estimates in Procedure 4000-1 of their policy and procedure manual; however, the lack of compliance in the element indicates that procedures are not being followed for all procurement methods. OmniTrans must update its manual to include detailed procedural guidance on developing independent cost estimates for each procurement method such as IFBs, RFPs, sole source, and small purchases. Training must be conducted with staff on updated procedures and compliance with these updated requirements must be verified by conducting an internal audit of procurements within thirty (30) days from the date of the final report.

OmniTrans Response: Omnitrans does not disagree with the assessment on this element, however it should be noted that the deficiencies were found on procurements that were awarded on or before May, 2012. Omnitrans Procurement is under the direction of a new Procurement Director (PD). The new PD identified the Independent Cost Estimate deficiencies soon after she joined Omnitrans on March 26, 2012 and has been working with all levels of staff and management to realign practices with FTA guidelines and Omnitrans' Procurement Policies & Procedures. Formal training was provided agency wide on December 12, 2012 (See Exhibit B). Although we recognize the benefit of annual procurement training to reinforce understanding, Omnitrans considers Corrective Action to be complete. Compliance will be verified within thirty (30) days from the date of the final report and annually thereafter.

Reviewing Contractor's Response: This corrective action plan is not acceptable. The standard PSR review process calls for the evaluation of FTA-funded contracts open during the past 24-month period ending March 31, 2013. As a result, contracts dated prior to March 2013 were reviewed. To ensure compliance, OMNITRANS must verify compliance within thirty (30) days from the date of the final report to relieve this deficiency.

13. Brand Name Restrictions

Basic Requirement: Chapter VI, Section 2(a)(3) and (a)(4)(f) of [FTA C 4220.1F](#) indicates that specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its salient characteristics is considered to be restrictive of competition.

Discussion: Of the twenty-three (23) procurements reviewed, six (6) were found to contain brand names. Of these, two (2) were found to be deficient. One deficiency was related to the procurement of fourteen (14), sixty-foot buses. The other pertained to the purchase of brand name bus filters that lacked the "or equal" designation and salient characteristics in specifications.

Best Practices: The goal of the solicitation process is to determine the best buy. By specifying brand names, competition can be limited. OmniTrans should work with requisitioners to determine whether brand names can be deleted from design or performance specifications improving the opportunity for full and open competition. Should the brand name be required, the designation "or equal" will allow potential bidders to propose alternate brand names. Procurement personnel must predetermine those salient physical and functional characteristics of the brand name product in order to compare the proposed alternatives.

Corrective Action: OmniTrans policies and procedures contain adequate coverage of brand name or equal specifications; however, training must be conducted with user departments and requisitioners to ensure that procedures are being followed. Compliance with procedures must be verified by conducting an internal audit of procurements within thirty (30) days from the date of the final report.

OmniTrans Response [Excerpted]: Omnitrans respectfully disagrees that Contract file RFP-PLN10-12 for Fourteen (14) Omnitrans Bus Rapid Transit Sixty Foot (60') Stylized Articulated Low Floor CNG Coaches (was a violation of the requirements for brand names (text added)). The reviewer noted that the solicitation included appropriate approved equal language but did not include the salient characteristics.

RFP-PLN10-12 only included brand names or equal on subcomponents. It is neither practical nor economical to list all of the salient characteristics for every subcomponent on a 60' CNG coach. The solicitation included appropriate approved equal language in Sections I, and II:

Sections I: At any time during this procurement, and up to the time specified in IP2 Proposed Schedule for the Procurement, Proposers may request, in writing, a clarification, or interpretation of any aspect, or a change to any requirement of the RFP or any addenda to the RFP. Requests may include suggested substitutes for specified items and for any brand names, which whenever used in this solicitation shall mean the brand name or approved equal. Such written requests shall be made to the contact person. The Proposer making the request shall be responsible for its proper delivery to the Agency as identified in Section I RFP on the form CER 2.0 Request for Pre-Offer Change or Approved Equal. Any request for a change to any requirement of the Contract documents must be fully supported with technical data, test results, or other pertinent information evidencing that the exception will result in a condition equal to or better than that required by the RFP, without substantial increase in cost or time requirements.

Section II: In all cases, materials must be new and furnished as specified. Where brand names or specific items are used in these specifications, consider the term "or approved equal" to follow. Wherever such names appear, requests for approved equals must be submitted as indicated in the terms and conditions and will only be accepted with the prior written approval from Omnitrans.

Lastly, twenty-one (21) requests for approved equals were submitted and evaluated without protest illustrating that the potential bidders understood the requirements and deemed it to be consistent with fair and open competitive practices (See Exhibit C).

Compliance will be verified within thirty (30) days from the date of the final report and annually thereafter.

Reviewing Contractor's Response: This corrective action plan is not acceptable. OmniTrans disagrees with this finding on the grounds that it is not feasible to include salient characteristics on brand name or equal bus components. There is no exclusion with regards to brand name or equal requirements for this type of procurement in FTA Circular 4220.1F. It is also not compliant practice to place the onus on proposers to provide salient characteristics. However, the grantee does not need to reverse-engineer a complicated part to identify precise measurements or specifications in order to describe its salient characteristics. Finally, OmniTrans violated its own published procedures on brand names for this procurement.

OmniTrans must conduct training on brand name requirements and verify compliance within thirty (30) days from the date of the final report.

16. Written Procurement Selection Procedures

Basic Requirement: Chapter III, Section 3(a) of [FTA C 4220.1F](#) requires that Grantees have written selection procedures for procurement transactions.

Discussion: Of the seventeen (17) procurements reviewed, seven (7) were found to be deficient and ten (10) were not deficient. In an IFB procurement, the selection procedures in the solicitation document stated that “Contract award will be made to the bidder whose bid meets the requirements contained herein and is most advantageous to OmniTrans.” This statement is clearly inconsistent with the standard process of awarding an IFB to the lowest responsive and responsible bidder. Another deficiency was related to a towing services RFP-method procurement that contained different evaluation factors and weighting assignments across the solicitation, evaluation forms completed by the evaluation committee, proposal analysis completed by the contract specialist, and letters of regret communicated to unsuccessful offerors. Procurements for onsite security services and paratransit on-board video surveillance were also conducted without following the evaluation process stated in the solicitation.

Best Practices: The grantee should establish written selection procedures in every solicitation. Once proposals are received, evaluators should follow these criteria when considering the proposals submitted and document the evaluators’ findings. Documentation for all procurements should be maintained in a central location regardless of award amount. The request for quotation for any small purchase should contain language identifying the basis for award (such as lowest priced responsive offer) and a copy of it should be included in the file.

Corrective Action: OmniTrans policies and procedures contain contractor selection requirements for each procurement method and do not need to be revised. However, training must be conducted on these requirements and compliance must be verified within thirty (30) days from the date of the final report.

OmniTrans Response: Omnitrans agrees with this assessment. Training will be provided to the Procurement Team on June 13, 2013 (See Exhibit D). Compliance will be verified within (30) days from the date of the final report and annually thereafter (See Exhibit E).

Reviewing Contractor’s Response: OmniTrans has indicated that training will be provided and compliance will be verified within thirty (30) days from the date of the final report. This corrective action is acceptable and will address the deficiency in written procurement selection procedures if completed.

18. Award to Responsible Contractors

Basic Requirement: Chapter VI, Section 8(b) of [FTA C 4220.1F](#) requires that grantees make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Responsibility may be affected by new information up to the time of contract award. Responsibility determination factors include whether the prospective contractor has:

- The appropriate financial, material, equipment, facility and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;

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- The capability to comply with the required delivery schedule considering all their existing business commitments;
 - A satisfactory record of performance;
 - A satisfactory record of integrity;
 - Legal qualification to contract with grantee; and supplied all necessary information in connection with the inquiry concerning responsibility.

Discussion: Of the twenty-six (26) procurements reviewed for compliance with this element, nineteen (19) were found to be deficient and seven (7) were not deficient. In many cases the procurement documentation lacked evidence of an EPLS/SAM check for debarment/suspension or the responsibility determinations were not completed prior to award. However, it was apparent from the contract files reviewed that OmniTrans has made a recent effort to conduct responsibility checks post-award and that a system is currently in place.

Best Practices: There are many proven methods to determine whether or not a supplier is responsible, including:

- Visiting the supplier's facility;
- Examining prior work performed by the supplier;
- Checking financial and client references;
- Evaluating prior performance reports; and reviewing the Federal debarred/suspended contractor listing.

A contractor responsibility determination form is provided as Appendix D in this report. OmniTrans should utilize this proposed form or a facsimile to document responsibility determinations.

Corrective Action: During the period of the PSR review, OmniTrans added an EPLS/SAM search to their standard responsibility checklist. Evidence must be provided of this updated checklist, staff must be trained on using the new form, and compliance must be verified by conducting an internal audit of procurements within thirty (30) days from the date of the final report.

OmniTrans Response: During the period of the PSR review, Omnitrans added an EPLS/SAM search to their standard responsibility checklist. Evidence of this updated checklist is attached (See Exhibit A), staff has been trained on using the new form, and compliance will be verified by conducting an internal audit of procurements within thirty (30) days from the date of the final report and annually thereafter.

Reviewing Contractor's Response: This corrective action plan is not acceptable. OmniTrans submitted a responsibility checklist (See Appendix Q) that includes verification that contractors are "not on declined or suspended listings." This form does not include specific mention of an EPLS/SAM search. Further, the training agenda submitted for corrective action does not include training on the use of updated responsibility forms. OmniTrans must conduct training with staff on responsibility requirements and conduct an internal audit of procurements within thirty (30) days from the date of the final report to verify compliance.

21. Fair and Reasonable Price Determination [Micro-Purchases]

Basic Requirement: Chapter VI, Section 3(a)(2)(c) of [FTA C 4220.1F](#) indicates that micro-purchases are those purchases under \$3,000. Micro-purchases requirements follow these guidelines:

- May be made without obtaining competitive quotations.

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- There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition.
 - Document that the price is fair and reasonable and how this determination was derived.

Discussion: Of thirteen (13) procurements reviewed for this requirement, twelve (12) were found to be deficient and one (1) was not deficient. These deficient micro purchase files did not include a fair and reasonable price determination that was conducted prior to award. Omnitrans had recently completed a post-award fair and reasonable price determination form, which showed that a process is now being followed.

Best Practices: The FTA Best Practices Manual suggests that grantees prepare some “boilerplate” determinations for signature that allows one to fill in the blanks, sign, and file it. Such a form might contain language that states that the price is fair and reasonable based on the buyer's knowledge of these or equivalent commercial items sold in the open marketplace. The form included as Appendix E to this report can be used as a basis to determine price reasonableness.

Corrective Action: Policies and procedures currently provide adequate requirements on conducting fair and reasonable price determinations for micro purchases. Staff training must be conducted on these procedures and compliance must be verified by undergoing an internal audit of micro-purchase files within thirty (30) days from the date of the final report.

Omnitran Response: *Staff training was conducted in January, however follow-up training will be provided again on June 13, 2013 (See Exhibit D). Compliance will be verified by conducting an internal audit within thirty (30) days from the date of the final report, and annually thereafter.*

Reviewing Contractor's Response: Training is scheduled for June 13, 2013 on fair and reasonable price determinations. Compliance will be verified by conducting an internal audit within thirty (30) days from the date of the final report. This corrective action plan is acceptable.

23. Price Quotations [Small Purchases]

Basic Requirement: Chapter VI, Section 3(b)(2) of [FTA C 4220.1F](#) defines small purchase procedures as those relatively simple and informal procurement methods for securing services, supplies, or other property that cost more than \$3,000, but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently set at \$100,000). It also indicates that price or rate quotations shall be obtained from an adequate number of qualified sources.

Discussion: Of the six (6) small purchases reviewed for this requirement, one (1) was found to be deficient and five (5) were not deficient. The deficient procurement was for methane detection services and did not include an adequate number of quotations.

Best Practices: The FTA recommends the solicitation of at least three firms for each small purchase to ensure an adequate level of competition is received. It is not unusual to have procedures that require rotation of sources as well as to broaden the base of competitors. Competitive quotes can be noted on the requisition form used. To improve effectiveness, procurement staff should not approve transactions that lack the required quotations without a waiver or sole source justification. Evidence of market analysis and the appraisal of competition should be included for single source procurements.

Corrective Action: Omnitrans explicitly requires three or more price quotations for all procurements between \$3,000.01 and \$25,000 in their current policies and procedures. Staff must be

trained on these requirements and compliance must be verified by conducting an internal review of procurement files within thirty (30) days from the date of the final report.

OmniTrans Response: *Omnitrans respectfully disagrees that Contract file IPM011-24 to provide methane detection consulting services is deficient with respect to the small purchase requirements. Omnitrans Counsel considered this procurement to be specialized enough to meet the statutory requirements of a specialized design profession under Government code 53060 and that these specialized services were procured as a sole source (See Exhibit F). A non-competitive checklist should have been used instead.*

Reviewing Contractor's Response: OmniTrans submitted a sole source justification and approval form for the procurement of methane detection consulting services. After considering this new documentation, the Reviewing Contractor reaffirms that this procurement was a single bid and that adequate competition was lacking. Two contractors were solicited for quotes; however, only one response was received. This procurement was incorrectly classified as a sole source as FTA conditions for the use of this method were not met. Sufficient evidence that justifies the lack of adequate competition has not been provided, and this individual procurement remains deficient.

The corrective action plan submitted by OmniTrans is not acceptable. Training must be conducted on obtaining adequate competition for small purchases and compliance must be verified within thirty (30) days from the date of the final report.

24. Clear, Accurate and Complete Specifications

Basic Requirement: Chapter III, Section 3(a)(1)(a), (b), and (d) of [FTA C 4220.1F](#) requires that grantees have a clear and accurate description of the technical requirements for the material, product, or service to be procured. Complete and accurate specifications are required to ensure that all potential bidders are given equal knowledge on grantee's requirements.

Discussion: Of the thirty-two (32) procurements reviewed for this requirement, one (1) was found to be deficient and thirty-one (31) were not deficient. The deficiency was due to a procurement for MS Office Training that did not include a specification or statement of work.

Best Practices: The FTA Best Practices Manual suggests that the specifications describe the grantees needs "as completely, clearly, accurately, and unambiguously as possible" in order to prevent the shipment of inadequate goods, and to prevent claims arising from errors. The grantee must ensure that specifications are clearly written and reviewed by enough people to ensure completeness and to insist that all orders and contracts contain clear specifications. See Appendix F for an outline of a statement of work that can be used as a basis for developing a complete list of requirements for contractors.

Corrective Action: Omnitrans procurement procedures contain more specific guidance on specifications for formal solicitation methods than for small purchases. Procedures should be revised to incorporate requirements regarding clear and accurate specifications for small purchases to ensure compliance going forward. Training must be conducted on these revised procedures and compliance must be verified through a self-audit of small purchases within thirty (30) days from the date of the final report.

OmniTrans Response: Although Omnitrans agrees that the one (1) small purchase solicitation did not include a written specification or a statement of work, the FTA's Best Practices and Omnitrans' Procurement Procedure 2030-1 does allow for telephone quotes. Chapter 4: "Depending on the requirements of the method of procurement you choose, you may solicit offers in a telephone call or in many other forms ranging up to multi-volume requests for proposals."

It is worth noting that this was an isolated instance that was facilitated by an employee who is no longer with Omnitrans. The current procurement team will receive refresher training on June 13, 2013 to reinforce their understanding (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Reviewing Contractor's Response: This corrective action plan is acceptable. Training should be conducted as planned and compliance must be verified within thirty (30) days from the date of the final report.

25. Adequate Competition- Two or More Competitors

Basic Requirement: Chapter VI, Section 3.i(1)2.a. of [FTA C 4220.1F](#) indicates that adequate competition exists when two or more responsible bidders are willing and able to compete effectively for the business.

Discussion: Of the seventeen (17) procurements reviewed for this requirement, three were found to be deficient and fourteen (14) were not deficient. The most significant deficiency in this area was related to preliminary architecture and engineering services for the sbX E Street Corridor Bus Rapid Transit (BRT) Project. Only a single bid was received for this procurement, which was valued at over \$15 Million. Given the magnitude of the opportunity and the sizeable market of suppliers available to complete this work, multiple bids should have been received and additional market research should have been conducted to identify potential suppliers.

Best Practices: Efforts should be made to re-bid those items where only one supplier had submitted a bid under a specific IFB. In those instances where the judgment is made that there are no reasonable alternate sources, a single source justification must be included in the file describing the reasons for that determination. Further, the grantee should pre-qualify suppliers so that an ample number of suppliers bid on its requirements. See Appendix G for a form to be used to document decisions on single bids.

Corrective Action: Procurement policies and procedures currently provide sufficient guidance on adequate competition. However, training must be conducted with staff on these requirements – particularly for those individuals involved in the procurement of A&E services. Training and verification of compliance with procedures must be completed within thirty (30) days from the date of the final report.

OmniTrans Response: Contract PLN08-1 for the preliminary architecture and engineering services for the sbX E Street Corridor Bus Rapid Transit (BRT) Project was outside of the scope of this PSR. This agreement was awarded on June 4, 2008 and fell within the scope of the PSR conducted on November 3-8, 2008 (See Exhibit G).

Although Omnitrans agrees that the RFPs for SAS13-02 VoIP Public Address System, and MKT13-17 Bus Stop Amenity Advertising did not secure two or more responsible bidders, staff followed the FTA guidelines for determining the validity of the procurement by reviewing the specifications and surveying potential sources. Both solicitations were advertised in newspapers of general circulation, posted online via Omnitrans' bidding system PlanetBids, and distributed to potential sources. Surveys were conducted for each solicitation and the validity of the procurement verified (See Exhibit H).

Reviewing Contractor's Response: This corrective action plan is not acceptable and efforts by OmniTrans to provide additional documentation are not sufficient to clear this finding. The single bid analysis documentation submitted in the grantee's response to the Draft Report was undated. Therefore, it cannot be verified that this analysis was completed prior to contract award. No documented efforts were made to consider the re-bid of the bus stop amenity advertising or VoIP public address system procurements, nor were any extensions made to the solicitation timeframe. For example, one potential bidder for the VoIP public address system stated that the time frame was too short to submit a proposal; no time extension was made as a result. No sources sought notices or Requests for Information were conducted for either of these procurements to understand the capabilities of the marketplace prior to the solicitation process.

Omnitrans must conduct training with staff on adequate competition requirements and verify compliance within thirty (30) days from the date of the final report.

32. Bid Opening [Sealed Bid]

Basic Requirement: Chapter VI, Section 3(c)(2)(e) of [FTA C 4220.1F](#) requires that all bids be publicly opened at the time and place prescribed in the invitation for bids. An important part of this process is that bids remain sealed until bid opening. Also, it is important that there is proper notation of the time and receipt of the bid to ensure that all bids are eligible for consideration. This ensures fairness in the competitive process.

Discussion: Of the four (4) sealed bid procurements reviewed for this requirement, three (3) were deficient and one (1) was not deficient. The sealed bid procurement for the sbX E Street construction project contained a bid opening document that was not signed. The bus painting and wrapping procurement only included a sign-in sheet for the bid opening and no documentation providing evidence that all bids were opened at the time and date set in the solicitation. The third deficiency related to a VoIP system procurement that was missing a bid opening form altogether. The bid opening documentation associated with the vehicle maintenance facility construction project was not deficient.

Best Practices: Some procedures which could be incorporated into a bid receipt and opening system as recommended in the *Best Practices Procurement Manual* include:

- Time and date-stamp bid packages as they arrive.
- Keep unopened bids in a secured location.
- On the day of receipt of bids, establish a place where bids will be read and can be deposited and time-stamped.
- Shortly before the time for receipt of bids, be sure all bids have been collected and brought to the designated area.
- At the designated time, announce that the time set for receipt of bids has arrived and that no further bids will be received.

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- Read bids aloud and have bids recorded on an *Abstract of Bids* form which is signed and dated then made available to the public, and incorporated into the procurement file.
 - Some grantees also publish the bid results on their websites to avoid record requests and to replace sending letters to unsuccessful bidders. A Bid Opening template is included in Appendix H.

Corrective Action: Omnitrans must implement a standard bid opening form that can be utilized in future sealed bid procurements. Evidence of this form must be provided and included in policies and procedures. Staff must be trained on these updated procedures and compliance must be verified within thirty (30) days from the date of the final report.

OmniTrans Response: *Omnitran agrees with this assessment. Omnitran will revise its policies and procedures with a standard bid opening form. Training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.*

Reviewing Contractor's Response: Training is currently scheduled for June 13, 2013 and compliance will be verified within thirty (30) days from the date of the final report. This corrective action plan is acceptable as a means of addressing this finding.

36. Evaluation [RFP]

Basic Requirement: Chapter VI, Section 3(d)(2)(b) of [FTA C 4220.1F](#) requires that:

- All evaluation factors are identified along with their relative importance;
- Grantees have a method in place for conducting technical evaluations of the proposals received and for selecting awardees.

Discussion: Of the thirteen (13) procurements reviewed for this requirement, five (5) were found deficient and eight (8) were not deficient. The solicitations for towing services, onsite security services, and paratransit onboard surveillance did not state the relative importance of evaluation factors. In another solicitation for HVAC and EMS maintenance/repair, the evaluation criteria section stated that “any other relevant factors as determined solely by the agency” would be considered in the evaluation of proposals.

Best Practices: The chosen method of solicitation must take into account factors other than price alone. Price must always be a factor in establishing the competitive range, unless the work envisioned is an Architectural and/or Engineering type of services. For construction type procurements where design must occur during the performance period, either a design-build or two-step procurement method should be used. The intention to use a specific method of procurement must be stated in all solicitation documents in order to provide clear expectations from potential contractors.

Corrective Action: There is a lack of knowledge around the RFP evaluation process at Omnitrans. Training must be conducted on RFP procedures and evaluations and compliance with updated requirements must be verified within thirty (30) days from the date of the final report.

OmniTrans Response: *Omnitran agrees with this assessment. Training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).*

Reviewing Contractor's Response: Training is currently scheduled on RFP evaluation for June 13, 2013 and OmniTrans plans to conduct an internal audit of a sample of procurements within thirty (30) days from the date of the final report. This plan to address the finding is acceptable.

38. Sole Source If Other Award Is Inadequate

Basic Requirement: Chapter VI, Section 3(i)(1)(b) of [FTA C 4220.1F](#) allows for procurements by non-competitive proposal only when the contract award is inadequate under other procurement methods and at least one of the conditions outlined below exists:

1. Item or service is only available from a single source;
2. Public exigency or emergency for the requirement will permit a delay from competitive bidding;
3. FTA authorizes non-competitive negotiations; or
4. Competition is deemed inadequate.

Title 49 U.S.C., Paragraph 5307(a)(1) defines such a capital maintenance item as one that is procured directly from the original manufacturer or supplier of the item to be replaced and the grantee first certified in writing to the FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.

Discussion: Of the nine (9) sole source procurements reviewed for this requirement, seven (7) were found deficient and two (2) were not deficient. The sole source justifications for the procurement of vehicle parts, bus wash repair components, computer supplies, and cellular services did not meet FTA conditions for the use of this procurement method. Furthermore, two (2) software maintenance contracts were renewed without competition and lacked base contracts with the software providers. Beyond the nine (9) contract files reviewed, there have been 490 sole source procurements over the last two years alone. This is a cause for overall concern regarding competition and corrective action must be taken to improve in this area.

Best Practices: The grantee should ensure that in sole source situations, the proper review of competition is performed prior to the approval of waivers. Each requirement subjected to review should assess whether or not a brand name or specified source is truly the only possible option for the grantee. Documentation must be thorough and specific, outlining the detailed reasoning for the sole source action. See Appendix I for an example of a Sole Source Justification Form.

Corrective Action: Omnitrans has detailed procedures regarding the appropriate use of sole source procurements; however, there appears to be confusion between the correct approaches for FTA-funded versus non-FTA-funded procurements. Omnitrans must conduct training on FTA sole source requirements and conduct a follow-up audit evidencing compliance within thirty (30) days from the date of the final report.

OmniTrans Response: *OmniTrans agrees with this assessment. Training will be provided to the Procurement Team on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E). Agency wide training will be provided within 30 days. A date/time/location has not yet been determined.*

Reviewing Contractor's Response: Training is currently scheduled on sole source procedures for June 13, 2013 and OmniTrans plans to conduct an internal audit to verify compliance within thirty (30) days from the date of the final report. This plan to address the finding is acceptable.

39. Cost Analysis Required [Sole Source]

Basic Requirement: Chapter VI, Section 6(a) of [FTA Circular 4220.1F](#) confirms that a cost analysis must be obtained when the offeror submits elements (labor hours, overhead, materials, etc.), when the price competition is inadequate, when there is only a sole source available, or when an order is changed. The recipient is not obligated to obtain a cost analysis where price reasonableness of the proposed contracts can be justified on the basis of a catalog or market price of a commercial product sold in large quantities to the general public, or where law or regulation have established price.

Discussion: Of the nine (9) sole source procurements reviewed for this requirement, eight (8) were found to be deficient. In the majority of these cases, there was no visible effort made to conduct a sole source cost analysis and no documentation was provided.

Best Practices: The grantee may consider the following Best Practices in cost analysis--

- Verification of cost or pricing data and evaluation of cost elements
- Evaluation of effect of offeror's current practices on future costs
- Comparison of costs proposed with actual or previous cost estimates
- Verification of offeror's costs with Federal cost principles

A cost analysis template is provided as Appendix J in this report.

Corrective Action: Omnitrans must conduct training on developing cost and profit analysis for sole source procurements (including analysis of fixed fee) and verify compliance by conducting a self-audit of sole source procurements within thirty (30) days from the date of the final report.

Omnitran Response: Omnitrans agrees with this assessment. Training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Reviewing Contractor's Response: Training is currently scheduled on cost analysis for sole source procurements. This training will take place on June 13, 2013 and should include analysis of fixed fee. OmniTrans plans to conduct an internal audit to verify compliance within thirty (30) days from the date of the final report. This corrective action plan is acceptable.

40. Evaluation of Options

Basic Requirement: Chapter VI, Section 7(b) of [FTA C 4220.1F](#) requires that the option quantities or periods contained in the contractor's bid or offer are evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, two (2) were deficient, five (5) were not deficient, and nineteen (19) were not applicable. Option period pricing was not evaluated at the time of award for the sbX E Street construction project and for the procurement of

fourteen 60 foot buses. Option pricing must be evaluated at the time of award if Omnitrans reasonably expects to exercise options in the future and this evaluation should be sufficiently documented in the procurement file.

Best Practices: Option years should be evaluated separately from the base year when making contract awards. Options exercised that were not evaluated at the time of contract award should be treated as sole source procurements.

Corrective Action: Omnitrans must conduct training on the evaluation of options and verify compliance with FTA requirements within thirty (30) days from the date of the final report.

Omnitran Response: *Omnitran agrees with this assessment. Training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).*

Reviewing Contractor's Response: Training is currently scheduled on the evaluation of options for June 13, 2013. OmniTrans plans to conduct an internal audit to verify compliance within thirty (30) days from the date of the final report. This corrective action plan is acceptable.

41. Cost or Price Analysis

Basic Requirement: Chapter VI, Section 6.a.b.c. of [FTA C 4220.1F](#) requires that grantees perform a cost or price analysis in connection with every procurement action, including contract modifications.

Discussion: Of the twenty-three (23) procurements reviewed for this requirement, ten (10) were deficient and thirteen (13) were found not deficient. The deficiencies were either caused by missing cost or price analysis or by incomplete efforts that lacked profit evaluation or analysis of extreme discrepancies in pricing received.

Best Practices: The grantee must ensure that all contract specialists understand the elements of price analysis, and that files reflect the use of such analysis to show a logical determination of price reasonableness. Sources of information that are available to conduct a price analysis include:

- Comparisons with other competitive proposals
- Previous contracts
- Catalog or market prices
- Historical prices and trending
- Independent cost estimates

One method to record this analysis is through use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so such as catalog or market prices offered in substantial quantities to the general public, regulated prices (e.g., for many utilities purchases), or comparison with recent prices for similar goods and services.

The grantee should conduct a more thorough analysis of price variances on bids, examining variances from the independent estimate as well as the differences between bids recorded. A price analysis template is provided as Appendix K in this report.

Corrective Action: Omnitrans must conduct training on cost and price analysis procedures and verify compliance with updated requirements within thirty (30) days from the date of the final report.

OmniTrans Response: Omnitrans agrees with this assessment. Training will be provided on June 13, 2013 (Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (Exhibit E).

Reviewing Contractor's Response: Training is currently scheduled on cost and price analysis for June 13, 2013. OmniTrans plans to conduct an internal audit to verify compliance within thirty (30) days from the date of the final report. This corrective action plan is acceptable.

42. Written Record of Procurement History

Basic Requirement: Chapter III, Section 3(d)(1) of [FTA C 4220.1F](#) requires that grantees maintain records detailing the history of each procurement. The basis for contract price requirement applies to all procurements except micro-purchases. At a minimum, the following must be included in the record:

- The rationale for the method of procurement;
- Selection of contract type;
- Reasons for contractor selection or rejection;

Discussion: Of the thirty-one (31) procurements reviewed for this requirement, nine (9) were found to be deficient and twenty-two (22) were not deficient. Though Omnitrans demonstrated the implementation of written record templates, the history of the procurement was often missing elements such as the basis for contract type, basis for contract price, and reasons for contractor selection or rejection. This deficiency was not isolated to a single procurement method and spanned small purchases, sole source, RFPs, and IFBs.

Best Practices: The Best Practices Manual states “a properly documented procurement file provides an audit trail from the initiation of the requirement to the beginning of the contract.” In addition, a well-documented file can be interpreted on its own, without any assistance or additional information.

Omnitrans should initiate a method of central tracking of their procurement activity. A policy describing the need for important file documentation to be captured in purchasing files should be established. Training should be provided to all personnel involved in the procurement process to ensure that proper procedures are being followed. In addition, the use of checklists would facilitate this process. The Best Practices Procurement Manual recommends the following procurement file documentation where appropriate:

- Purchase request, acquisition planning information and other pre-solicitation documents
- Evidence of availability of funds
- Rationale for the method of procurement (negotiations, formal advertising)
- List of sources solicited
- Independent cost estimate
- State of work/scope of services
- Copies of published notices of proposed contract action
- Copy of the solicitation, all addenda and all amendments
- Liquidated damages determination

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- An abstract of each offer or quote
 - Contractor's contingent fee representation and other certifications and representations
 - Contracting Officer's determination of contractor responsiveness and responsibility
 - Cost or pricing data
 - Determination that price is fair and reasonable including an analysis of the cost and price data
 - Required internal approvals for award
 - Notice of award
 - Notice to unsuccessful quoters or offerors and record of any debriefing
 - Record of any protest
 - Bid, Performance, Payment or other bond documents and notices to sureties
 - Required insurance documents, if any, and
 - Notice to proceed

Appendix L provides an example of a procurement summary for potential use.

Corrective Action: Omnitrans has developed and plans to implement a procurement planning template for use in future procurements. Omnitrans must conduct training on written record procedures and templates and verify compliance with FTA requirements within thirty (30) days from the date of the final report.

OmniTrans Response: Omnitrans developed and implemented a procurement planning template for use in future procurements (See Exhibit A). Omnitrans informally trained procurement staff on written record procedures and templates and will follow up with formal training on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (Exhibit E).

Reviewing Contractor's Response: OmniTrans submitted a procurement planning template along with the response to the Draft Report. Training is currently scheduled for June 13, 2013 on the use of this planning template and on procurement history forms. OmniTrans plans to conduct an internal audit to verify compliance within thirty (30) days from the date of the final report. This corrective action plan is acceptable.

43. Exercise of Options

Basic Requirement: Chapter V, Section 7.a. (1) (a)(b)(c) 2 of [FTA C 4220.1F](#) requires that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

- An option may not be exercised unless it is determined that the option price is better than prices available at the time the option is exercised.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, three (3) were deficient and twenty-three (23) were not applicable. These deficiencies were primarily due to the fact that option periods were exercised without verifying that prices were still fair and reasonable for the sbX E Street construction project and for the procurement of fourteen 60 foot buses.

Best Practices: When options are used, separate negotiations of the price of each option period is performed. This allows the agency to better understand pricing levels for each year of performance, rather than use average prices over a longer period. Options priced on a yearly basis also allows for the

assessment of the price of the option against market prices prior to a decision to exercising the right. Options must be included in the contract in order to be exercised.

Corrective Action: Omnitrans must conduct training on procedures regarding exercising options, and verify compliance with FTA requirements within thirty (30) days from the date of the final report.

OmniTrans Response: Omnitrans does not disagree with the assessment on this element, however it should be noted that the deficiencies were found on procurements that were awarded on or before September, 2011. Formal training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Reviewing Contractor's Response: The procurements found deficient in this element were completed within the standard 24-month sample period applicable to all Procurement System Reviews. Training is currently scheduled on procedures around the exercise of options for June 13, 2013. OmniTrans plans to conduct an internal audit to verify compliance within thirty (30) days from the date of the final report. This corrective action plan is acceptable.

44. Out of Scope Changes

Basic Requirement: Chapter VI, Section 3(i)(1)(b) of [FTA C 4220.1F](#) indicates that a contract change that is not within the scope of the original contract is considered a sole source procurement. The grantee must justify why an amendment was the only feasible course of action, and must comply with FTA requirements for cost analysis and profit negotiation.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, two (2) were deficient and twenty-four were not applicable. A change order for \$400,000 pertaining to the sbX E Street construction project was not evaluated appropriately, and a staff augmentation contract originally awarded for \$99,000 was allowed to escalate to \$539,000.

Best Practices: Proposed changes to a contract must be evaluated to determine whether they constitute a cardinal change to the contract. A change that adds tasks not related to the original scope of work would be considered out-of-scope. A significant change in the value of the contract can sometimes indicate the change may be outside of the scope of the work originally envisioned. An out-of-scope change must be treated as a sole source procurement. A change order evaluation template is provided in Appendix M.

Corrective Action: Change orders for the staff augmentation contract for the sbX E Street Corridor BRT Project failed to meet the requirements of FTA C 4220.1F, Chapter VI, Section 3(i)(1)(b), related to out of scope changes. Omnitrans must conduct training on procedures regarding contract changes and verify compliance with FTA requirements within thirty (30) days from the date of the final report.

OmniTrans Response: Both of the change orders found to be deficient were processed as sole source procurements but did not comply with FTA requirements for cost analysis and profit negotiation (See Exhibit I). As noted in Element 2, with the Omnitrans' sbX E Street Corridor Bus Rapid Transit (BRT) Project is on a tight schedule, terminating the full agreement with APSI will have an adverse effect on completing the project on time, within budget. With FTA's concurrence, Omnitrans proposes continued utilization of APSI for scheduling and environmental services, and will terminate the utility coordination services component of the agreement and issue an RFP for continued support through project completion.

Training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Reviewing Contractor's Response: As noted in the Reviewing Contractor's Response to element number two (contract administration), there is not sufficient justification that Change Order #32 for \$400,000 was within scope or met sole source requirements. With respect to terminating the staff augmentation services contract, this contract remains deficient from a compliance perspective.

Training on change order procedures is scheduled for June 13, 2013 and OmniTrans plans to conduct an internal audit to verify compliance within thirty (30) days from the date of the final report. These aspects of the corrective action plan are acceptable.

47. Time and Materials Contracts

Basic Requirement: Chapter VI, Section 2.c. (2) (b) of [FTA C 4220.1F](#) indicates that Time and Materials Contracts should be used only:

- After a determination that no other type of contract is suitable
- If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, two (2) were found to be deficient, and two (2) were not deficient. The procurements for staff augmentation and vehicle maintenance facility A&E services did not include a determination that no other type of contract was suitable.

Best Practices: A decision matrix can be created which lists the prerequisites for each contract type (such as fixed price, time and materials, cost reimbursement) in order to determine that the method chosen is suited to the complexity of the specifications or statement of work (See Appendix N, Method of Procurement Decision Matrix). The FTA mandates that the grantee specify a maximum obligation (ceiling price) in any time and materials contract, thus limiting the financial obligation of the grantee.

The requirement for detailing the method of procurement and contract type in the procurement file must be indicated. Time and materials contracts must only be utilized after all other contract types have been considered. If a time and materials contract is determined to be the most suitable contract type, a maximum ceiling price must be stated in the contract to meet the Federal requirement.

Corrective Action: Omnitrans must conduct training on procedures for justifying time and materials type contracts and verify compliance with FTA requirements within thirty (30) days from the date of the final report.

OmniTrans Response: Omnitrans does not disagree with the assessment on this element, however it should be noted that the deficiencies were found on procurements that were awarded on or before May, 2011. The procurement team has already been trained however, refresher training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Reviewing Contractor's Response: The procurements found deficient in this element were conducted within the standard 24-month sample period applicable to all Procurement System Reviews. Training is currently scheduled on requirements for time and materials type contracts for June 13, 2013. OmniTrans plans to conduct an internal audit to verify compliance within thirty (30) days from the date of the final report. This corrective action plan is acceptable.

48. Cost Plus Percentage of Cost

Basic Requirement: Chapter VI, Section 2(c)(2) (a) of [FTA C 4220.1F](#) indicates that the cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, one (1) was found to be deficient and twenty-five (25) were not deficient. The joint venture contract for the sbX E Street construction project contained a fifteen percent markup on all change orders, which constitutes a cost plus percentage of cost type contract.

Best Practices: Cost plus percentage of cost contracts are forbidden and should not be used.

Corrective Action: The joint venture contract for the sbX E Street construction project failed to meet the requirements of FTA C 4220.1F, Chapter VI, Section 2(c)(2)(a), related to the prohibition of cost plus percentage of cost contracts. Policies and procedures must be revised to explicitly prohibit the use of cost plus percentage of cost type contracts. Training must be conducted on this requirement and compliance must be verified within thirty (30) days from the date of the final report.

OmniTrans Response: Omnitrans agrees with this assessment and has already initiated a contract amendment (See Exhibit I). Procurement procedure 6005-2, § 3.1.10 prohibits cost plus a percentage of cost contracts. Training will be conducted on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Reviewing Contractor's Response: OmniTrans submitted evidence that procurement policies prohibit cost plus percentage of cost type contracts. The joint venture contract remains deficient from a compliance perspective. Training on this compliance element is scheduled for June 13, 2013 and compliance will be verified by conducting an internal audit within thirty (30) days from the date of the final report.

50. Piggybacking

Basic Requirement: Chapter V, Section 7(a)(2) of [FTA C 4220.1F](#) defines Piggybacking as an assignment of existing contract rights to purchase supplies, equipment, or services. Grantees piggybacking on another agency's contract must ensure that the original contract contained an assignability clause and that the terms and conditions of that contract meet the FTA requirements.

Discussion: Of the three (3) procurements reviewed for this requirement, all three (3) were deficient. Common areas of concern in these deficient piggybacks included insufficient inclusion of Federal clauses, missing minimum and maximum quantities, and a lack of market analysis of prices before purchases were approved. In one instance, a purchase for cellular and mobile data services was made off of a GSA contract without obtaining competition. Procurements off of GSA schedules must be competed and are subject to all FTA piggybacking requirements.

Best Practices: Agencies may assign contractual rights to purchase goods and services to other entities if the original contract contains appropriate assignability provisions. Grantees are encouraged to utilize available state and local intergovernmental agreements for acquiring common goods and services. Grantees should perform a market analysis to ensure that the price is fair and reasonable. The use of a checklist such as the one included as Appendix O can be used to ensure compliance with piggybacking requirements.

Corrective Action: Omnitrans must revise its policies and procedures with regards to piggybacking to include FTA requirements and instructions on buying off of GSA contracts. Training must be conducted on revised procedures and compliance must be verified within thirty (30) days from the date of the final report.

***Omnitran Response:** Omnitran will revise its policies and procedures with regards to piggybacking to include updated FTA requirements (FTA C4220.1F, rev 3) and instructions on buying off of GSA contracts. Training will be conducted on June 13, 2013 (See Exhibit D). Compliance will be verified within thirty (30) days from the date of the final report (See Exhibit E).*

Reviewing Contractor's Response: Training is scheduled for June 13, 2013 on FTA requirements for piggybacking and purchasing off of GSA schedule contracts. Omnitran plans to verify compliance within thirty (30) days from the date of the final report. This corrective action plan is acceptable.

56. Clauses

Basic Requirement: Chapter IV, Section 2 and Appendix D of [FTA C 4220.1F](#) indicate that:

- A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement.
- Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement.

Discussion: Of the thirty-two (32) procurements reviewed for this requirement, twenty-two (22) were found to be deficient and ten (10) were not deficient. There were a variety of reasons for clause deficiencies. In some cases, Omnitran had inserted Best Practice Procurement Manual discussions about clauses rather than designing concrete clauses based on the manual guidance. The Best Practices Procurement Manual should be used only as a guide in the development of clauses. In other cases, the Access to Records clause utilized in contracts did not grant direct access to records by the FTA and federal government. Finally, several purchase orders incorporated clauses by reference to the Omnitran website without actually having FTA clauses available online.

Best Practices: The Best Practices Procurement Manual discusses which Federal clauses are to be flowed down to sub-contractors and third parties. The flow-down requirements are applicable not only to contracts but to purchase orders as well. See Appendix P, Contract Clauses from [FTA Circular 4220.1F](#) for an example of a contract clause listing. Purchase order forms that include these requirements should be put in place. Including all required clauses in every file would simplify contract preparation for all federally funded items. Current procedures do not list all the specific flow-down requirements and should be updated to do so, whether in an appendix or in the body of the procedure. Grantees should also provide training to all personnel who are involved in the procurement process (including sub-contractors) to ensure they are familiar with the requirements of the FTA Circular and Master Agreement.

Corrective Action: Federal clauses must be included on the Omnitrans website if there is reference to them on purchase orders. In addition, Omnitrans must conduct training and verify compliance with FTA requirements within thirty (30) days from the date of the final report.

OmniTrans Response: Federal clauses were posted on the Omnitrans website on April 17, 2013. It should be noted that 21 of the 22 procurements with deficiencies were awarded on or before April, 2012. Omnitrans respectfully disagrees with the deficiency on the remaining IFB and has attached supporting documentation (See Exhibit J). Training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Reviewing Contractor's Response: The Reviewing Contractor verifies that Federal clauses are now posted on the Omnitrans website. The full text of these clauses was submitted in the grantee's response to the Draft Report (See Appendix Q). The Access to Records clause utilized now grants direct access to records by the FTA, and includes all required federal clauses. The procurement for bus painting and wrapping services remains deficient as the additional documentation submitted by OmniTrans in its response to the Draft Report does not address the specific missing clauses identified by the Reviewing Contractor. The document provided only a list of files without indicating the underlying contract language. Training is scheduled for June 13, 2013 on FTA clauses and regulatory requirements. OmniTrans plans to verify compliance within thirty (30) days from the date of the final report. This corrective action plan is acceptable.

VI. SUGGESTIONS FOR IMPROVING THE PROCUREMENT SYSTEM

The suggestions for improving the system are provided by the reviewing contractor to highlight practices that were observed during the PSR that, if not changed, could result in future deficiencies. These suggestions do not address FTA requirements, but point to under-performing or non-existent elements of the grantee's procurement system. We suggest the following activities be completed by Omnitrans:

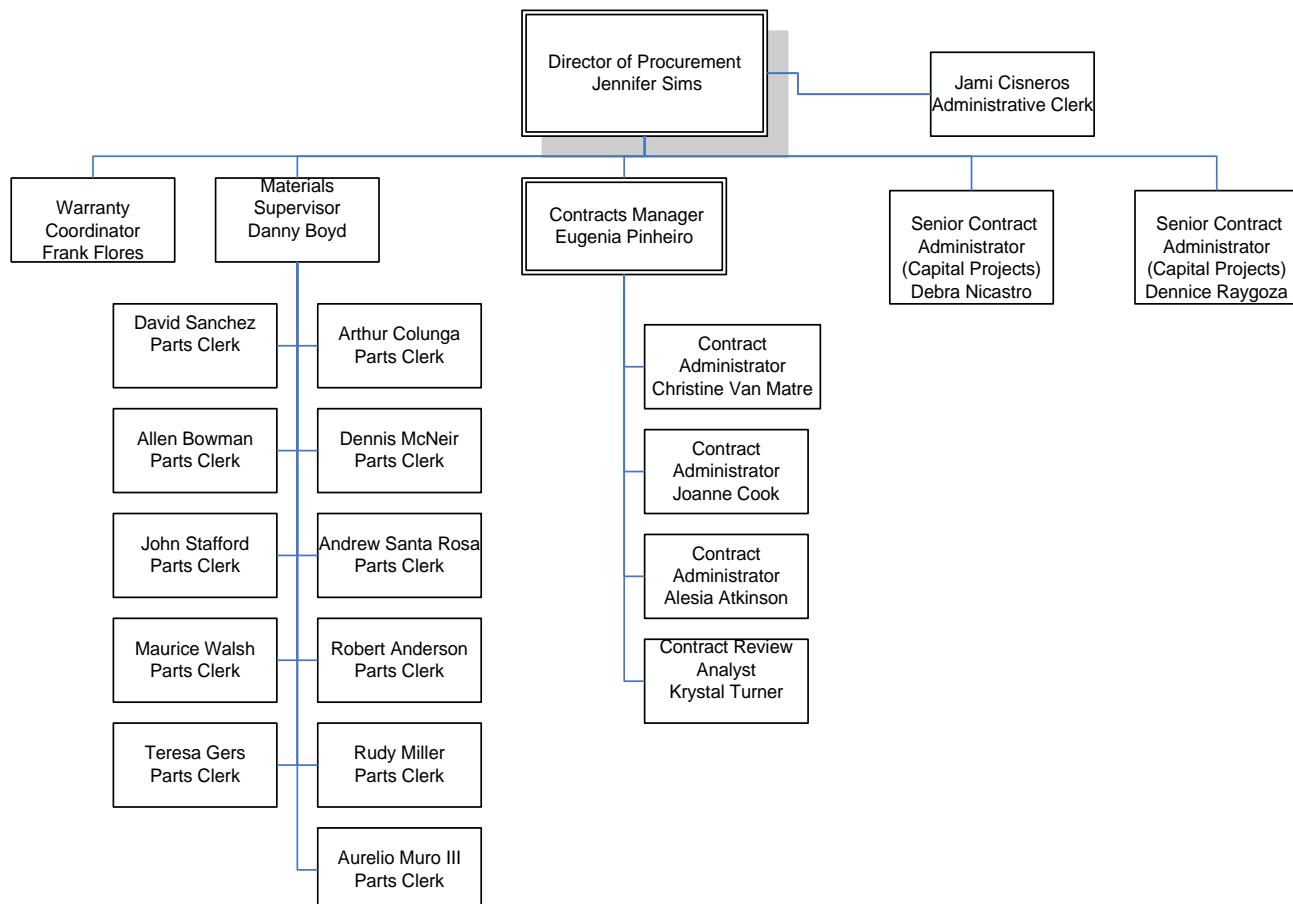
1. Date all Independent Cost Estimates
2. When completing evaluation sheets, use pen instead of pencil
3. For indefinite quantity rolling stock procurements, include the actual minimum and maximum quantities versus using the existing language that states that quantities "could be higher or lower"
4. Construction Contracts: Once a contractor is deemed non-responsive they should be notified of that fact and their prices should then not be considered
5. Progress Payments: Ensure that a provision for title is associated with all payments.
6. Stop the practice of assigning evaluation points to presentations

VII. APPENDIX ITEMS

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APPENDIX A: OMNITRANS ORGANIZATION

Omnitrans
Procurement Department
As of March 4, 2013



APPENDIX B: CONTRACT ADMINISTRATION PLANNING PROCESS

Tasks	Related Standards
1. Determine the required level of contract surveillance	<p>Consider key factors that may affect the need for contract surveillance, including:</p> <ul style="list-style-type: none">• The criticality (i.e., importance to the Government) of the supplies or services. Generally, contracts are designated as:<ol style="list-style-type: none">A. Critical contracts, including:<ul style="list-style-type: none">— Contracts negotiated under unusual and compelling urgency; and— Contracts for major systemsB. Other contracts for items needed to:<ul style="list-style-type: none">— Maintain a Government or contractor production or repair line;— Preclude out-of-stock conditions; or— Meet user needs for non-stock itemsC. All other contracts<ul style="list-style-type: none">— Contract requirements for reporting production progress and performance— The contract performance schedule— The contractor's production plan— The contractor's history of contract performance— The contractor's experience with the contract supplies or services— The contractor's financial capability— Any special circumstances identified by the contracting office <p>Contracts at or below the simplified acquisition threshold should not normally require production surveillance</p>

Tasks	Related Standards
2. Determine what contract administration functions (if any) will be delegated	<p>Consider:</p> <ul style="list-style-type: none"> • Agency and contracting activity policy on the delegation of contract administration • Any additional delegations authorized by prior agreement with the contract administration office (CAO), provided that: <ul style="list-style-type: none"> – The required CAO resources are available – The head of the contracting activity or designee has approved the delegation of any authority to issue orders under provisioning procedures in existing contracts or under basic ordering agreements for items and services identified in the schedule; and – The delegation does not require the CAO to undertake new or follow-on acquisitions • Prior coordination with the contract administration office (when required) • The need for special surveillance of a major system acquisition • The need for specialized support services at a contractor or subcontractor facility; and • The resources available at the contract administration office (CAO)
3. Delegate contract administration as applicable	<p>As provided in agency procedures, delegate contract administration or specialized support services. The delegation should include:</p> <ul style="list-style-type: none"> • The name and address of the CAO designated to perform the administration (this information also must be entered in the contract) • Copies of all contracting agency regulations or directives <ul style="list-style-type: none"> – Referenced in the contract; or – Otherwise necessary for contract administration (unless previously provided) <p>A CAO or a contracting office retaining contract administration, may request support from the CAO cognizant of the contractor location where performance of specific contract administration functions is required. The request must:</p> <ul style="list-style-type: none"> • Be in writing • Clearly state the specific functions to be performed; and • Be accompanied by a copy of pertinent contractual and other necessary documents <p>Subcontract administration support may be requested as long as the request conforms to FAR requirements and good business practice</p>

Tasks	Related Standards
<p>4. Develop a contract administration plan</p>	<p>The plan should be designed to facilitate effective and efficient contract administration considering:</p> <ul style="list-style-type: none"> • The required level of contract surveillance • Contract terms and conditions related to administration • Contractor performance milestones • Government performance milestones (e.g., for providing Government furnished property or responding to contractor plans and other required submissions) • Contractor reporting procedures • Contract quality requirements • Name, position, and authority of contract administration team members; and • Milestones for any reports required from contract administration team members <p>Documentation of the plan should meet the requirements of the agency, activity, and good business practice</p>

Tasks	Related Standards
<p>5. Identify qualified personnel (as authorized and necessary) to represent the Contracting Officer in administering contract requirements</p>	<p>Contracting and contract administration offices typically include a wide variety of full-time specialists who represent the Contracting Officer in contractor system reviews and other contract administration activities. These specialists may include:</p> <ul style="list-style-type: none"> • Quality Assurance Representatives (QARs) • Software specialists • Property specialists; and • Others <p>When authorized by the contract and necessary for effective and efficient contract administration, the Contracting Officer may also appoint technical representatives for specific contracts. The representatives may be known by a variety of names, including:</p> <ul style="list-style-type: none"> • Contracting Officer Representative (COR) • Contracting Officer's Representative (COR) • Contracting Officer Technical Representative (COR); or • Technical Representative of the Contracting Officer (TRCO) <p>Technical representative designations must follow agency and activity guidelines. Generally:</p> <ul style="list-style-type: none"> • The cognizant Contracting Officer must assure that each representative possesses the necessary technical qualifications • Technical representatives must undergo training on their responsibilities and authority as a representative of the Contracting Officer • The delegation must include a copy of the applicable portions of the contract and other necessary guidance • The delegation remains in effect throughout the life of the contract unless canceled or modified by the cognizant Contracting Officer

APPENDIX C: INDEPENDENT COST ESTIMATE

Independent Cost Estimate

Contract Type: _____ **Date of Estimate:** _____

Description of Goods / Service: _____

Method of Obtaining the Estimate:

- I have obtained the following estimate from....
- Published Price List / Past pricing (date) _____
- Engineering or technical estimate
- Independent Third Party estimate
- Other (specify) _____

Cost Estimate Details:

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

A: Cost of Standard Items

Product	Cost (\$/ea)		Notes / Data Source
	Delivered	No Freight	

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

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

The preceding cost estimate was prepared by:

Signature

Date

For complex items or tasks, attach detailed spreadsheet(s) explaining rationale.

APPENDIX D: RESPONSIBILITY DETERMINATION FORM

- 1. Appropriate financial, equipment, facility, and personnel** Yes No Can review standard ratios on submitted financial reports or ask for D&B report
 - 2. Ability to meet the delivery schedule** Yes No Conduct an analysis of the offeror's technical approach
 - 3. Satisfactory period of performance** Yes No Tied to reference check; can also use D&B Past Performance Evaluation service/product
 - 4. Satisfactory record of integrity, not on declined or suspended listings** Yes No Attach the results from checking the Excluded Parties website at www.sam.gov
 - 5. Ability to get bonding and insurance** Yes No Evaluate insurance certificate and assurances from Bonding company
-

APPENDIX E: FAIR AND REASONABLE PRICE DETERMINATION

Fair and Reasonable Price Determination

I hereby determine the price to be fair and reasonable based on at least one of the following:

Check one or more:

- Found reasonable on recent purchase.
- Obtained from current price list.
- Obtained from current catalog.
- Commercial market sales price from advertisements.
- Similar in related industry.
- Personal knowledge of item procured.
- Regulated rate (utility).

Comments:

- A copy of purchase order, quotes, catalog page, or price list is attached.
-
-

Purchasing Agent

Date

APPENDIX F: SOW TEMPLATE

Statement of Work Title: [Type text]

1.0 Project Background

Describe the need for the goods or services, the current environment, and the transit agency's key objective(s) as it relates to this requirement. Provide a brief description/summary of the goods or services sought.

- Short statement of the problem to be resolved
- Expected project duration
- Transit agency organizational units and/or key individuals involved in managing the project
- Alternative solutions or implementation strategies evaluated

a) Transit agency requires these products and/or services due to:

b) Transit agency is attempting to complete a project on [] and requires supplier/contractor assistance in the:

c) The completion of this work will help the transit agency:

2.0 Scope

Include a high-level view of the procurement, its objectives, size and projected outcomes.

Describe the extent of what the work entails.

This procurement is limited to the purview of:

To support the location(s) of: [Type text]

The supplier / contractor will provide such products and / or services to achieve the following outcomes (state quantitative or measureable outcomes):

1) [Type text]

2) [Type text]

3) [Type text]

Only work within this scope can be performed under an eventual contract.

2.1 Results

Indicate the key end results that the project will achieve when successfully executed. Measurable performance indicators for anticipated benefits may also be listed here.

2.2 Anticipated Benefits

Describe what the organization will gain through completion of this project.

2.3 Business Processes Impacted

Review major changes in the way work will be conducted once the project is complete (if any).

2.4 Customers / End Users Impacted

Identify the specific individuals or groups whose work will be most affected during and after the project's execution.

3.0 Applicable Documents

List legal, regulatory, policy, security, and similar relevant documents. Include publication number, title, version, date and where the document can be obtained. If only certain portions of documents apply, state this. Indicate the definition of terms, if needed.

List any publications, manuals, and regulations that the supplier / contractor must abide by:

a) [Type text]

b) [Type text]

c) [Type text]

Definitions and Acronyms:

4.0 Summary of Requirements

These are the key tasks expected of the supplier / contractor according to the Schedule and the Statement of Work.

List the key technical and functional requirements for the project. Highlight up to 20 requirements that you consider to be essential to the ultimate success of the project. Include the expected outputs / outcomes and performance standards.

Write tasks to be performed in a logical and sequential arrangement of work to the extent possible. Describe the tasks in terms of outcomes expected, such as response time, cleanliness level, equipment up-time and functionality. Use “work” words, such as:

1) Review...

2) Analyze...

3) Repair...

4) Install...

5) Construct...

All tasks should have quantifiable or observable results.

5.0 Schedule and Deliverables

List all outputs / outcomes and submittals with specific due dates or time frames. Include type, quantity and delivery point (s). Include the acceptance criteria for each.

Milestone or Major Project Deliverable	Planned Completion Date

6.0 Quality Assurance Plan

Explain what the transit agency's quality expectations are, how (and how often) deliverables or services will be monitored and evaluated, and the process to follow when the outputs / outcomes are below performance standards.

The following levels of quality are to be judged acceptable under this contract:

- a) All milestones or services will be achieved and all reports will be submitted on time in accordance with Section 5.0 of this SOW.
- b) All milestones, services, products or reports will meet the outcomes noted in Section 4.0 of this SOW.
- c) Supplier / Contractor work will be monitored by transit agency project and Contract Management Staff.
- d) Specific quality requirements for this contract are as follows:
 - 1) On time policy = [Type text]
 - 2) Acceptable quality = [Type text]
 - 3) Responsiveness = [Type text]
 - 4) Service Level = [Type text]

APPENDIX G: SINGLE BID ANALYSIS

Solicitation	Action to Plan
Solicitation:	Award Contract Basis:
Product / Service to be procured:	Extended Deadline (modify solicitation):
Bid or Proposal Due Date:	New Due Date:
Number of Solicitations Requested:	Reprocure:
Number of Bids Received:	New Solicitation Due to be Completed:
Reasons for Lack of Competition:	Projected due Date:
<input type="checkbox"/> Lack competency <input type="checkbox"/> Lack available resources <input type="checkbox"/> Poor timing <input type="checkbox"/> Short response due date <input type="checkbox"/> Other	

Signed

Title

Date

APPENDIX H: BID OPENING FORM

PUBLIC BID OPENING:

Date:

Address:

Witnessed by:

Grantee Estimate: \$

Checked by:

Documentation:

Prices:

DOCUMENTATION REQUIRED

CONTRACTOR	Proposed Contract Prices	1	2	3	4	5	6	7	8	9	10	11	12	13
		<ol style="list-style-type: none">1. Acknowledgement of addendum 12. Commitment of Surety3. Certification pertaining to ineligible contractors4. Certification of Dumping Facilities5. Certification of Examination of Available Subsurface Data6. Bid signatures including EEO certification7. Proposal guarantee furnished8. Affidavit of non-collusion9. Schedule for participation by DBE Contractors 16%10. Buy America Certificate11. Right-to-Know Law Certification12. Debarment13. Lobbying												

APPENDIX I: SOLE SOURCE JUSTIFICATION FORM

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

Check one:

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

Comments:

- An Independent Estimate and a Statement of Work are attached.

Purchasing Agent

Senior Manager

Date

Date

APPENDIX J: COST ANALYSIS FORM

PAGE	OF	PGS
COST ANALYSIS SUMMARY (For New Contracts Including Letter Contracts) (See Instructions below)		
SOLICITATION #	SUPPLIES AND/OR SERVICES TO BE FURNISHED	
PREPARER'S NAME, DEPARTMENT, TITLE, PHONE		
DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED	APPROVAL SIGNATURE	

Detail Description of Cost Elements				
1. Direct Material	Vendor A Proposal	Vendor B Proposal	Independent Estimate	Analysis
A. PURCHASED PARTS				
B. SUBCONTRACTED ITEMS				
C. OTHER - (1) RAW MATERIAL				
(2) STANDARD COMMERCIAL ITEMS				
<i>TOTAL DIRECT MATERIAL</i>				
2. MATERIAL OVERHEAD (RATE % x \$ BASE *)				

3. DIRECT LABOR	ESTIMATED HOURS	RATE/HOUR	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
TOTAL DIRECT LABOR						

4. LABOR OVERHEAD			Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
OH Rate						
X BASE (labor total above)						
TOTAL LABOR OVERHEAD						

5. OTHER DIRECT COSTS	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
A. SPECIAL TOOLING/EQUIPMENT				
<i>TOTAL SPECIAL TOOLING/EQUIPMENT</i>				
B. TRAVEL				
(1) TRANSPORTATION				
(2) PER DIEM OR SUBSISTENCE				
<i>TOTAL TRAVEL</i>				

DETAIL DESCRIPTION OF COST ELEMENTS (continued)	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
C. INDIVIDUAL CONSULTANT SERVICES				
<i>TOTAL INDIVIDUAL CONSULTANT SERVICES</i>				
D. OTHER				
<i>TOTAL OTHER</i>				
E. SUBTOTAL DIRECT COST AND OVERHEAD				
6. GENERAL AND ADMINISTRATIVE (G&A) RATE %				
X \$ BASE (Use 5.E above)				
7. ROYALTIES (if any)				
8. SUBTOTAL ESTIMATED COST				
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY				
10. SUBTOTAL ESTIMATED COST				
11. FEE OR PROFIT				
12.TOTAL ESTIMATED COST AND FEE OR PROFIT				
13. Discounts				
14. Option Costs (specify)				
15. ADJUSTED COST				

ANALYSIS GUIDELINES

A. DIRECT MATERIAL

- A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices).
- B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors
- C. Other:
 - (1) Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.
 - (2) Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

B. MATERIAL OVERHEAD

Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (Item 6).

C. DIRECT LABOR

Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used. If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

D. LABOR OVERHEAD

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available,

E. OTHER DIRECT COSTS

- A. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.
- B. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip. Compare and check costs.
- C. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.

D. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.

F. GENERAL AND ADMINISTRATIVE EXPENSE

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

G. ROYALTIES

If more than \$250, analyze the following information for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties,

H. SUBTOTAL ESTIMATED COST

Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

I. CONTRACT FACILITIES CAPITAL AND COST OF MONEY

Analyze the offerors' supporting calculations and compare to known standards.

J. SUBTOTAL ESTIMATED COST

This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.

K. FEE OR PROFIT

Review the total of all proposed Fees or Profit. Remember that the FTA prohibits cost plus percentage of cost contracting.

L. TOTAL ESTIMATED COST AND FEE OR PROFIT

Analyze the range of total estimated costs including Fee or Profit, and explain variance to independent estimate. Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.

M. DISCOUNTS

Review basis for Discounts and range between offers.

ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE.

APPENDIX K: PRICE ANALYSIS

PO / Contract: _____

The evidence compiled by a price analysis includes:

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

DATE: _____ **PREPARED BY:** _____

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

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

SUMMARY MATRIX

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

Attachments:

APPENDIX L: PROCUREMENT SUMMARY EXAMPLE

PROCUREMENT MEMORANDUM

Date: _____ Completed by: _____

PO / Contract No. _____ Source of Funding: _____

Method of Procurement

Micro Purchase: _____ Competitive RFP: _____ Competitive Bid: _____
Small Purchase: _____ A&E Services: _____ Sole Source: _____

Justification if Non-Competitive:**Reason for the Procurement****Contract Type:****Rationale for contract type:**

Reason for selection/rejection:

Lowest responsive, responsible bidder: (IFBs)

Evaluation results were (RFPs):

Basis for Contract Price:

Accepted contractor's proposed pricing:

Negotiated Price (attached memorandum)

Other:

Cost / Price Analysis:

The price offered by the supplier was within ____% of the independent estimate, and variance between the offerors constituted a range of _____. The competitive range was determined to be from \$_____

Pricing discrepancies between the offers was attributed to _____

Other sources/data used to affirm price reasonableness were _____

Summary of Responsibility and Responsiveness Checks**Award**

Date of contract award: _____

Board Approval (Attach Meeting Minutes): _____

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

APPENDIX M: CHANGE ORDER REVIEW CHECKLIST

Date _____

Contract Number _____

Contractor _____

Contract Title _____

Reviewer _____

New Contract Total _____

Change Order Number _____

Dollar Value Increase _____

Length of Time Extension Granted _____

New Performance Period End Date _____

Change Order Checklist	Category			Comment
	D		A	
1. In-house estimate prepared				
2. Project Manager approval				
3. Scope meeting held				
4. Work authorized within contract scope				
5. Scope of work adequate for bidding				
6. Contractor proposal includes impact costs, price				
7. Cost analysis conducted				
8. If price >10% of ICE, rationale provided				
9. Negotiation memorandum				
10. Written record of change documented				
11. Signed modification in file				
12. Evidence of Board Approval prior to initiation of changed work (if required)				
13. Notice to Proceed on file				
14. No evidence of arbitrary action				

Additional comments:

APPENDIX N: PROCUREMENT DECISION MATRIX

Method of Procurement

Micro-purchase Amount < \$3,000 Multiple Sources	Competitive Procurement Amount > \$3,000 Multiple Sources Not an Emergency
Small Purchase Amount < \$100,000 Complete and Adequate Specification or Description Two or more quotes available	Sealed Bid (IFBs) > \$100,000 Complete and Adequate Specification or Description Two or more responsible bidders willing to compete Selection can be made on the basis of price alone Firm Fixed Price Contract is used No discussion with bidders required after receipt of bids
Sole Source Approved by FTA OEM, Custom Item OR Only One Source OR Competition Inadequate after Solicitation OR Emergency/Public Exigency	Competitive Proposals (RFPs) > \$100,000 Complete Specifications Not Feasible Bidder Input Needed Two or more responsible bidders willing to compete Discussion needed with bidders after proposals Fixed price can be set after discussions -- OR -- a cost reimbursement contract is determined

Selection of Contract Type

Type of Contract Fixed price Firm fixed unit prices Cost plus fixed fee Time and materials (T&M) Blanket purchase order Indefinite Delivery Indefinite Quantity (IDIQ)	Justification for T&M Type Contract (if selected)
---	--

APPENDIX O: PIGGYBACKING CHECKLIST

Definition: *Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process.* ("FTA Dear Colleague" letter, October 1, 1998).

In order to assist in the performance of your review, to determine if a situation exists where you may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. Ensure that your final file includes documentation substantiating your determination.

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

Note: This worksheet is based upon the policies and guidance expressed in (a) the FTA Administrator's "Dear Colleague" letter of October 1, 1998, (b) the *Best Practices Procurement Manual, Section 6.3.3—Joint Procurements of Rolling Stock and "Piggybacking,"* and (c) FTA Circular 4220.1F.

APPENDIX P: CONTRACT CLAUSE MATRIX

APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

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

PROVISION	Professional Services/A&E	Operations/Management	Rolling Stock Purchases	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, EEO, ADA)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$ 25,000	>\$ 25,000	>\$ 25,000	>\$ 25,000	> \$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.
Fly America	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.
PROVISION	Professional Services/A&E	Operations/Management	Rolling Stock Purchases	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	

PROVISION	Professional Services/A&E	Operations/Management	Rolling Stock Purchases	Construction	Materials & Supplies
Copeland Anti-Kickback Act Section 1 Section 2				All All exceeding \$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

APPENDIX Q: OMNITRANS RESPONSE TO DRAFT REPORT



1700 W. Fifth St.
San Bernardino, CA 92411
909-379-7100
www.omnitrans.org

June 4, 2013

Mr. Leslie T. Rogers
Regional Administrator, FTA Region IX
201 Mission Street, Suite 1650
San Francisco, CA 94105-1839

Re: FT2013 Procurement System Review

Dear Mr. Rogers:

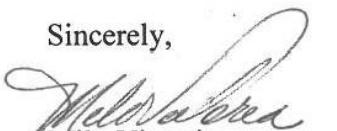
Omnitrans has reviewed the findings as outlined in the Procurement System Review Draft Report dated April 26, 2013. The review assessed compliance of the sample files with 60 system-wide and individual "elements" as defined in FTA Circular 4220.1F. The review found deficiencies in twenty two (22) elements and requested the Agency review the deficiencies in the report and provide a corrective action plan and schedule to bring Omnitrans into compliance where necessary.

You will find attached to this letter a summary of each deficient finding, a brief description of the finding and where appropriate, a discussion/corrective action plan.

Based on the attached, I believe that Omnitrans has fully complied with FTA's recommendations as detailed in the Procurement System Review Report. If there are any elements that have not been addressed to your satisfaction or if further documentation is necessary, please feel free to contact me. I can be reached at (909) 379-7112.

Thank you in advance for your continued support of Omnitrans.

Sincerely,



Milo Victoria
CEO/General Manager

cc: Samuel J. Gibbs, Director of Internal Audit Services, Omnitrans
Jennifer M. Sims, Director of Procurement, Omnitrans

Background

The scope of the PSR was to select a limited sample for review from all FTA-funded contracts, including revenue contracts, open during the last 24-month period ending March 31, 2013. However, in preparing for the on-site review, the FTA consultant requested to review “all procurements in process, contracted for, or completed associated with the E Street Corridor Bus Rapid Transit Project.” Some of those procurements and resulting agreements dated back to 2007 and do not reflect current procurement system controls and are noted in the discussions below.

Omnitrans’ Procurement staff has worked diligently over the last six months to develop numerous tools and checklists to ensure compliance with FTA C 4220.1F. Taking a systematic approach to satisfying the required documentation elements increases productivity by replacing narratives with standard forms and enhances the agency’s ability to ensure compliance. Some of the improvements made prior to the PSR include (See Exhibit A for new forms):

- Development of standard templates for Contracts, Regulatory Requirements, and Purchase Order Terms and Conditions
- Development of Procurement Guidelines (flowchart) to assist non-procurement personnel;
- New Price Analysis/Reasonableness Form
- New Responsibility Determination Form
- New Procurement History Form
- New Method of Procurement Decision Matrix Form
- Development of a standard Procurement Plan (implemented immediately following PSR incorporating suggestions made by the FTA consultant)
- Implementation of a comprehensive online bidding system facilitated by Planetbids
- New purchase order approval routing through Omnitrans’ financial system (SAP)
- New management review checklist (to include FTA PSR Checklist)

Element (2) Contract Administration System

Basic Requirement: Chapter III, Section 3 of FTA C 4220.1F requires that grantees maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Discussion/Corrective Action:

Three (3) change orders/amendments were noted in the Draft Report prompting this deficiency. Omnitrans respectfully disagrees that these change orders indicate the absence of a contract administration system that “ensures that contractors perform in accordance with the terms and conditions, and specifications of their contracts or purchase orders.” There is no evidence that suggests that the contractors in question have failed to perform.

The foundation to ensuring adequate procurement system controls is through the establishment of sound policies and procedures. Omnitrans had no deficiencies noted in Element 2 Procurement Policies and Procedures Manual, including:

- Policy 6000 – Contract Administration – Overview

-
- Procedure 6000-1 Contract Administration Overview
 - Procedure 6005-2 – Types of Contracts
 - Procedure 6010-1 – Project Management
 - Procedure 6020-1 – Contract Amendments and Change Orders
 - Procedure 6021-1 – Exercise of Contract Options
 - Procedure 6030-1 – File Administration
 - Procedure 6040-1 – Advance Payments to Contractors
 - Procedure 6050-1 – Contract Closeout
 - Procedure 6050-2 – Project Change Orders and Close-Out
 - Procedure 6060-1 – Contract Termination
 - Procedure 6070-1 – Liquidated Damages
 - Procedure 6080-1 – Contract Claims & Disputes
 - Procedure 6090-1 – Administration of DBE Program

Change order (CCO #32) was issued to provide a contractual mechanism to expedite the processing of time sensitive field directives for electrical/utility, civil, station, and landscape/irrigation work as directed by the Resident Engineer to avoid incurring additional costs and/or delays to the project. A ROM (rough order of magnitude) was received, a sole source justification obtained and reviewed. This change order was processed to increase controls and avoid costly ratifications. The recommendation and business justification provided by the project team was evaluated and determined to be within scope.

The water channeling work noted on the Draft Report as being “conducted without adherence to procurement procedures such as developing an independent cost estimate” is addressed under Element 7 – Independent Cost Estimates.

Omnitrans respectfully disagrees that Contract IPMO12-23 with APSI Construction Management to provide staff augmentation services was “allowed to escalate to \$539,000, indicating a lack of control and contract management.” Omnitrans considered the augmentation services to be a small procurement and utilized the FTA’s small purchase procedures accordingly. Staff solicited proposals from three (3) qualified firms. Supporting documentation was provided in the file to support Omnitrans’ decision to award to the most qualified firm. The Board awarded an agreement to the highest qualified firm on May 2, 2012, in an amount not to exceed \$90,000 plus a 10% contingency of \$9,000.

Procurement correctly deemed IPMO12-23 Amendment No. 2 to be out of scope with the original small procurement and resulting contract, illustrating that Omnitrans’ Procurement System does have adequate controls were in place. Amendment No. 2 was processed as a sole source procurement and approved by the Board on January 9, 2013 (See Element 38 – Sole Source If Other Award Is Inadequate).

With the Omnitrans’ sbX E Street Corridor Bus Rapid Transit (BRT) Project on a tight schedule, terminating the full agreement with APSI will have an adverse effect on completing the project on time, within budget. With FTA’s concurrence, Omnitrans proposes continued utilization of APSI for scheduling and environmental services which are very critical at this juncture;

Omnitrans will terminate the utility coordination services component of the APSI agreement; and issue an RFP for continued utility coordination support through project completion.

Element (7) Independent Cost Estimates

Basic Requirement: Chapter VI, Section 6 of FTA C 4220.1F requires that: "... in connection with every procurement action ... grantees must make independent estimates before receiving bids or proposals." Establishing a cost estimate in advance of the offer using a method independent from the perspective of offerors ensures a clear basis for analysis of cost or price, and provides essential procurement and financial planning information. Independent cost estimates are made by qualified engineering and functional staff who have first-hand knowledge of the commodity or service being purchased. The cost estimate is developed based on product knowledge, experience, and market status, and is used in performing price and cost analysis.

Discussion:

Discussion: Of the thirty-two (32) procurements reviewed, twelve (12) were found to be deficient and twenty (20) were not deficient. The deficiencies stemmed from a range of issues including undated estimates, budgeted amounts being used as the estimate, and insufficient detail or supporting analysis. The deficiencies in this element pertained to sole source and RFP procurements.

Corrective Action: Omnitrans does not disagree with the assessment on this element, however it should be noted that the deficiencies were found on procurements that were awarded on or before May, 2012. Omnitrans Procurement is under the direction of a new Procurement Director (PD). The new PD identified the Independent Cost Estimate deficiencies soon after she joined Omnitrans on March 26, 2012 and has been working with all levels of staff and management to realign practices with FTA guidelines and Omnitrans' Procurement Policies & Procedures. Formal training was provided agency wide on December 12, 2012 (See Exhibit B). Although we recognize the benefit of annual procurement training to reinforce understanding, Omnitrans considers Corrective Action to be complete. Compliance will be verified within thirty (30) days from the date of the final report and annually thereafter.

Element (13) Brand Name Restrictions

Basic Requirement: Chapter VI, Section 2(a)(3) and (a)(4)(f) of FTA C 4220.1F indicates that specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its salient characteristics is considered to be restrictive of competition.

Discussion:

Of the twenty-three (23) procurements reviewed, six (6) were found to contain brand names. Of these, two (2) were found to be deficient. One deficiency was related to the procurement of fourteen (14), sixty-foot buses. The other pertained to the purchase of brand name bus filters that lacked the "or equal" designation and salient characteristics in specifications.

Omnitrans respectfully disagrees that Contract file RFP-PLN10-12 for Fourteen (14) Omnitrans Bus Rapid Transit Sixty Foot (60') Stylized Articulated Low Floor CNG Coaches. The reviewer

noted that the solicitation included appropriate approved equal language but did not include the salient characteristics. According to FTA C4220.1F § VI,2.a.(3):

“When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a “brand name or equal” description may be used to define the performance or other salient characteristics of the property or services sought. The specific features or salient characteristics of the named brand which must be met by offerors of “an equal” proposal must be clearly stated (discussed further in Chapter VI of this circular).

RFP-PLN10-12 only included brand names or equal on subcomponents. It is neither practical nor economical to list all of the salient characteristics for every subcomponent on a 60' CNG coach. The solicitation included appropriate approved equal language in Sections I, and II:

Sections I: *At any time during this procurement, and up to the time specified in IP2 Proposed Schedule for the Procurement, Proposers may request, in writing, a clarification, or interpretation of any aspect, or a change to any requirement of the RFP or any addenda to the RFP. Requests may include suggested substitutes for specified items and for any brand names, which whenever used in this solicitation shall mean the brand name or approved equal. Such written requests shall be made to the contact person. The Proposer making the request shall be responsible for its proper delivery to the Agency as identified in Section 1 RFP on the form CER 2.0 Request for Pre-Offer Change or Approved Equal. Any request for a change to any requirement of the Contract documents must be fully supported with technical data, test results, or other pertinent information evidencing that the exception will result in a condition equal to or better than that required by the RFP, without substantial increase in cost or time requirements.*

Section II: *In all cases, materials must be new and furnished as specified. Where brand names or specific items are used in these specifications, consider the term “or approved equal” to follow. Wherever such names appear, requests for approved equals must be submitted as indicated in the terms and conditions and will only be accepted with the prior written approval from Omnitrans.*

Lastly, twenty-one (21) requests for approved equals were submitted and evaluated without protest illustrating that the potential bidders understood the requirements and deemed it to be consistent with fair and open competitive practices (See Exhibit C).

Corrective Action: Compliance will be verified within thirty (30) days from the date of the final report and annually thereafter.

Element (16) Written Procurement Selection Procedures

Basic Requirement: Chapter III, Section 3(a) of FTA C 4220.1F requires that Grantees have written selection procedures for procurement transactions.

Discussion: Of the seventeen (17) procurements reviewed, seven (7) were found to be deficient and ten (10) were not deficient. In an IFB procurement, the selection procedures in the solicitation document stated that “Contract award will be made to the bidder whose bid meets the requirements contained herein and is most advantageous to Omnitrans.” This statement is clearly inconsistent with the standard process of awarding an IFB to the lowest responsive and responsible bidder. Another deficiency was related to a towing services RFP-method procurement that contained different evaluation factors and weighting assignments across the solicitation, evaluation forms completed by the evaluation committee, proposal analysis completed by the contract specialist, and letters of regret communicated to unsuccessful offerors. Procurements for onsite security services and paratransit on-board video surveillance were also conducted without following the evaluation process stated in the solicitation.

Corrective Action: Omnitrans agrees with this assessment. Training will be provided to the Procurement Team on June 13, 2013 (See Exhibit D). Compliance will be verified within (30) days from the date of the final report and annually thereafter (See Exhibit E).

Element (18) Award to Responsible Contractors

Basic Requirement: Chapter VI, Section 8(b) of FTA C 4220.1F requires that grantees make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Responsibility may be affected by new information up to the time of contract award. Responsibility determination factors include whether the prospective contractor has:

- The appropriate financial, material, equipment, facility and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;
- The capability to comply with the required delivery schedule considering all their existing business commitments;
- A satisfactory record of performance;
- A satisfactory record of integrity;
- Legal qualification to contract with grantee; and supplied all necessary information in connection with the inquiry concerning responsibility.

Discussion: Of the twenty-six (26) procurements reviewed for compliance with this element, nineteen (19) were found to be deficient and seven (7) were not deficient. In many cases the procurement documentation lacked evidence of an EPLS/SAM check for debarment/suspension or the responsibility determinations were not completed prior to award. However, it was apparent from the contract files reviewed that Omnitrans has made a recent effort to conduct responsibility checks post-award and that a system is currently in place.

Corrective Action: During the period of the PSR review, Omnitrans added an EPLS/SAM search to their standard responsibility checklist. Evidence of this updated checklist is attached (See Exhibit A), staff has been trained on using the new form, and compliance will be verified by conducting an internal audit of procurements within thirty (30) days from the date of the final report and annually thereafter.

Element (21) Fair and Reasonable Price Determination [Micro-Purchases]

Basic Requirement: Chapter VI, Section 3(a)(2)(c) of FTA C 4220.1F indicates that micro-purchases are those purchases under \$3,000. Micro-purchases requirements follow these guidelines:

- May be made without obtaining competitive quotations.
- There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition.
- Document that the price is fair and reasonable and how this determination was derived.

Discussion: Of thirteen (13) procurements reviewed for this requirement, twelve (12) were found to be deficient and one (1) was not deficient. These deficient micro purchase files did not include a fair and reasonable price determination that was conducted prior to award. Omnitrans had recently completed a post-award fair and reasonable price determination form, which showed that a process is now being followed.

Corrective Action: Staff training was conducted in January, however follow-up training will be provided again on June 13, 2013 (See Exhibit D). Compliance will be verified by conducting an internal audit within thirty (30) days from the date of the final report, and annually thereafter.

Element (23) Price Quotation [Small Purchases]

Basic Requirement: Chapter VI, Section 3(b)(2) of FTA C 4220.1F defines small purchase procedures as those relatively simple and informal procurement methods for securing services, supplies, or other property that cost more than \$3,000, but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently set at \$100,000). It also indicates that price or rate quotations shall be obtained from an adequate number of qualified sources.

Discussion:

Of the six (6) small purchases reviewed for this requirement, one (1) was found to be deficient and five (5) were not deficient. The deficient procurement was for methane detection services and did not include an adequate number of quotations.

Omnitrans respectfully disagrees that Contract file IPMO011-24 with Carlin Environmental to provide methane detection consulting services is deficient with respect to the small purchase requirements. Omnitrans counsel considered this procurement to be specialized enough to meet the statutory requirements of a specialized design profession under Government code 53060 and that these specialized services were procured as a sole source (See Exhibit F). A non-competitive checklist should have been used instead.

Element (24) Clear and Complete Specifications

Basic Requirement: Chapter III, Section 3(a)(1)(a), (b), and (d) of FTA C 4220.1F requires that grantees have a clear and accurate description of the technical requirements for the material,

product, or service to be procured. Complete and accurate specifications are required to ensure that all potential bidders are given equal knowledge on grantee's requirements.

Discussion: Of the thirty-two (32) procurements reviewed for this requirement, one (1) was found to be deficient and thirty-one (31) were not deficient. The deficiency was due to a procurement for MS Office Training that did not include a specification or statement of work.

Although Omnitrans agrees that the one (1) small purchase solicitation did not include a written specification or a statement of work, the FTA's Best Practices and Omnitrans' Procurement Procedure 2030-1 does allow for telephone quotes. *Chapter 4: "Depending on the requirements of the method of procurement you choose, you may solicit offers in a telephone call or in many other forms ranging up to multi-volume requests for proposals."*

Corrective Action: It is worth noting that this was an isolated instance that was facilitated by an employee who is no longer with Omnitrans. The current procurement team will receive refresher training on June 13, 2013 to reinforce their understanding (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Element (25) Adequate Competition – Two or More Competitors

Basic Requirement: Chapter VI, Section 3.i(1)2.a. of FTA C 4220.1F indicates that adequate competition exist when two or more responsible bidders are willing and able to compete effectively for the business.

Discussion: Of the seventeen (17) procurements reviewed for this requirement, three (3) were found to be deficient and fourteen (14) were not deficient. The most significant deficiency in this area was related to preliminary architecture and engineering services for the sbX E Street Corridor Bus Rapid Transit (BRT) Project. Only a single bid was received for this procurement, which was valued at over \$15 Million. Given the magnitude of the opportunity and the sizeable market of suppliers available to complete this work, multiple bids should have been received and additional market research should have been conducted to identify potential suppliers.

Contract PLN08-1 for the preliminary architecture and engineering services for the sbX E Street Corridor Bus Rapid Transit (BRT) Project was outside of the scope of this PSR. This agreement was awarded on June 4, 2008 and fell within the scope of the PSR conducted on November 3-8, 2008 (See Exhibit G).

Although Omnitrans agrees that the RFPs for SAS13-02 VoIP Public Address System, and MKT13-17 Bus Stop Amenity Advertising did not secure two or more responsible bidders, staff followed the FTA guidelines for determining the validity of the procurement by reviewing the specifications and surveying potential sources. Both solicitations were advertised in newspapers of general circulation, posted online via Omnitrans' bidding system PlanetBids, and distributed

to potential sources. Surveys were conducted for each solicitation and the validity of the procurement verified (See Exhibit H).

|

FTA C4220.1F § VI-17.2a :

2 Single Bid or Single Proposal. Upon receiving a single bid or single proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

a Adequate Competition. FTA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the recipient's control. Many unrelated factors beyond the recipient's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, FTA's competition requirements will be fulfilled, and the procurement will qualify as a valid competitive award.

Element (32) Bid Opening [Sealed Bid]

Basic Requirement: Chapter VI, Section 3(c)(2)(e) of FTA C 4220.1F requires that all bids be publicly opened at the time and place prescribed in the invitation for bids. An important part of this process is that bids remain sealed until bid opening. Also, it is important that there is proper notation of the time and receipt of the bid to ensure that all bids are eligible for consideration. This ensures fairness in the competitive process.

Discussion: Of the four (4) sealed bid procurements reviewed for this requirement, three (3) were deficient and one (1) was not deficient. The sealed bid procurement for the sbX E Street construction project contained a bid opening document that was not signed. The bus painting and wrapping procurement only included a sign-in sheet for the bid opening and no documentation providing evidence that all bids were opened at the time and date set in the solicitation. The third deficiency related to a VoIP system procurement that was missing a bid opening form altogether. The bid opening documentation associated with the vehicle maintenance facility construction project was not deficient.

Corrective Action: Omnitrans agrees with this assessment. Omnitrans will revise its policies and procedures with a standard bid opening form. Training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Element (36) Evaluation [RFP]

Basic Requirement: Chapter VI, Section 3(d)(2)(b) of FTA C 4220.1F requires that:

- All evaluation factors are identified along with their relative importance;
- Grantees have a method in place for conducting technical evaluations of the proposals received and for selecting awardees.

Discussion: Of the thirteen (13) procurements reviewed for this requirement, five (5) were found deficient and eight (8) were not deficient. The solicitations for towing services, onsite security services, and paratransit onboard surveillance did not state the relative importance of evaluation factors. In another solicitation for HVAC and EMS maintenance/repair, the evaluation criteria section stated that “any other relevant factors as determined solely by the agency” would be considered in the evaluation of proposals.

Corrective Action: Omnitrans agrees with this assessment. Training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Element (38) Sole Source If Other Award Is Inadequate

Basic Requirement: Chapter VI, Section 3(i)(1)(b) of FTA C 4220.1F allows for procurements by non-competitive proposal only when the contract award is inadequate under other procurement methods and at least one of the conditions outlined below exists:

1. Item or service is only available from a single source;
2. Public exigency or emergency for the requirement will not permit a delay from competitive bidding;
3. FTA authorizes non-competitive negotiations; or
4. Competition is deemed inadequate.

Title 49 U.S.C., Paragraph 5307(a)(1) defines such a capital maintenance item as one that is procured directly from the original manufacturer or supplier of the item to be replaced and the grantee first certified in writing to the FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.

Discussion: Of the nine (9) sole source procurements reviewed for this requirement, seven (7) were found deficient and two (2) were not deficient. The sole source justifications for the procurement of vehicle parts, bus wash repair components, computer supplies, and cellular services did not meet FTA conditions for the use of this procurement method. Furthermore, two (2) software maintenance contracts were renewed without competition and lacked base contracts with the software providers. Beyond the nine (9) contract files reviewed, there have been 490 sole source procurements over the last two years alone. This is a cause for overall concern regarding competition and corrective action must be taken to improve in this area.

Corrective Action: Omnitrans agrees with this assessment. Training will be provided to the Procurement Team on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E). Agency wide training will be provided within 30 days. A date/time/location has not yet been determined.

Element (39) Cost Analysis Required [Sole Source]

Basic Requirement: Chapter VI, Section 6(a) of FTA Circular 4220.1F confirms that a cost analysis must be obtained when the offeror submits elements (labor hours, overhead, materials, etc.), when the price competition is inadequate, when there is only a sole source available, or when an order is changed. The recipient is not obligated to obtain a cost analysis where price reasonableness of the proposed contracts can be justified on the basis of a catalog or market price of a commercial product sold in large quantities to the general public, or where law or regulation have established price.

Discussion: Of the nine (9) sole source procurements reviewed for this requirement, eight (8) were found to be deficient. In the majority of these cases, there was no visible effort made to conduct a sole source cost analysis and no documentation was provided.

Corrective Action: Omnitrans agrees with this assessment. Training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Element (40) Evaluation of Options

Basic Requirement: Chapter VI, Section 7(b) of FTA C 4220.1F requires that the option quantities or periods contained in the contractor's bid or offer are evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, two (2) were deficient, five (5) were not deficient, and nineteen (19) were not applicable. Option period pricing was not evaluated at the time of award for the sbX E Street construction project and for the procurement of fourteen 60 foot buses. Option pricing must be evaluated at the time of award if Omnitrans reasonably expects to exercise options in the future and this evaluation should be sufficiently documented in the procurement file.

Corrective Action: Omnitrans agrees with this assessment. Training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Element (41) Cost or Price Analysis

Basic Requirement: Chapter VI, Section 6.a.b.c. of FTA C 4220.1F requires that grantees perform a cost or price analysis in connection with every procurement action, including contract modifications.

Discussion: Of the twenty-three (23) procurements reviewed for this requirement, ten (10) were deficient and thirteen (13) were found not deficient. The deficiencies were either caused by missing cost or price analysis or by incomplete efforts that lacked profit evaluation or analysis of extreme discrepancies in pricing received.

Corrective Action: Omnitrans agrees with this assessment. Training will be provided on June 13, 2013 (Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (Exhibit E).

Element (42) Written Record of Procurement History

Basic Requirement: Chapter III, Section 3(d)(1) of FTA C 4220.1F requires that grantees maintain records detailing the history of each procurement. The basis for contract price requirement applies to all procurements except micro-purchases. At a minimum, the following must be included in the record:

- The rationale for the method of procurement;
- Selection of contract type;
- Reasons for contractor selection or rejection;

Discussion: Of the thirty-one (31) procurements reviewed for this requirement, nine (9) were found to be deficient and twenty-two (22) were not deficient. Though Omnitrans demonstrated the implementation of written record templates, the history of the procurement was often missing elements such as the basis for contract type, basis for contract price, and reasons for contractor selection or rejection. This deficiency was not isolated to a single procurement method and spanned small purchases, sole source, RFPs, and IFBs.

Corrective Action: Omnitrans developed and implemented a procurement planning template for use in future procurements (See Exhibit A). Omnitrans informally trained procurement staff on written record procedures and templates and will follow up with formal training on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (Exhibit E).

Element (43) Exercise of Options

Basic Requirement: Chapter V, Section 7.a. (1) (a)(b)(c) 2 of FTA C 4220.1F requires that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

- An option may not be exercised unless it is determined that the option price is better than prices available at the time the option is exercised.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, three (3) were deficient and twenty-three (23) were not applicable. These deficiencies were primarily due to the fact that option periods were exercised without verifying that prices were still fair and reasonable for the sbX E Street construction project and for the procurement of fourteen 60 foot buses.

Corrective Action: Omnitrans does not disagree with the assessment on this element, however it should be noted that the deficiencies were found on procurements that were awarded on or before September, 2011. Formal training will be provided on June 13, 2013 (See Exhibit D).

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Element (44) Out of Scope Changes

Basic Requirement: Chapter VI, Section 3(i)(1)(b) of FTA C 4220.1F indicates that a contract change that is not within the scope of the original contract is considered a sole source procurement. The grantee must justify why an amendment was the only feasible course of action, and must comply with FTA requirements for cost analysis and profit negotiation.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, two (2) were deficient and twenty-four were not applicable. A change order for \$400,000 pertaining to the sbX E Street construction project was not evaluated appropriately, and a staff augmentation contract originally awarded for \$99,000 was allowed to escalate to \$539,000.

Corrective Action: Both of the change orders found to be deficient were processed as sole source procurements but did not comply with FTA requirements for cost analysis and profit negotiation (See Exhibit I). As noted in Element 2, with the Omnitrans' sbX E Street Corridor Bus Rapid Transit (BRT) Project is on a tight schedule, terminating the full agreement with APSI will have an adverse effect on completing the project on time, within budget. With FTA's concurrence, Omnitrans proposes continued utilization of APSI for scheduling and environmental services, and will terminate the utility coordination services component of the agreement and issue an RFP for continued support through project completion.

Training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Element (47) Time and Materials Contracts

Basic Requirement: Chapter VI, Section 2.c. (2) (b) of FTA C 4220.1F indicates that Time and Materials Contracts should be used only:

- After a determination that no other type of contract is suitable
- If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, two (2) were found to be deficient, and two (2) were not deficient. The procurements for staff augmentation and vehicle maintenance facility A&E services did not include a determination that no other type of contract was suitable.

Corrective Action: Omnitrans does not disagree with the assessment on this element, however it should be noted that the deficiencies were found on procurements that were awarded on or before May, 2011. The procurement team has already been trained however, refresher training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing

an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Element (48) Cost Plus Percentage of Cost

Basic Requirement: Chapter VI, Section 2(c)(2) (a) of FTA C 4220.1F indicates that the cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Discussion: Of the twenty-six (26) procurements reviewed for this requirement, one (1) was found to be deficient and twenty-five (25) were not deficient. The joint venture contract for the sbX E Street construction project contained a fifteen percent markup on all change orders, which constitutes a cost plus percentage of cost type contract.

Corrective Action: Omnitrans agrees with this assessment and has already initiated a contract amendment (See Exhibit I). Procurement procedure 6005-2, § 3.1.10 prohibits cost plus a percentage of cost contracts:

3.1.10. Cost Plus Percentage of Cost Contracts

- 3.1.10.1. The use of cost plus percentage of cost type of contracts are prohibited.

Training will be conducted on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).

Element (50) Piggybacking

Basic Requirement: Chapter V, Section 7(a)(2) of FTA C 4220.1F defines Piggybacking as an assignment of existing contract rights to purchase supplies, equipment, or services. Grantees piggybacking on another agency's contract must ensure that the original contract contained an assignability clause and that the terms and conditions of that contract meet the FTA requirements.

Discussion: Of the three (3) procurements reviewed for this requirement, all three (3) were deficient. Common areas of concern in these deficient piggybacks included insufficient inclusion of Federal clauses, missing minimum and maximum quantities, and a lack of market analysis of prices before purchases were approved. In one instance, a purchase for cellular and mobile data services was made off of a GSA contract without obtaining competition. Procurements off of GSA schedules must be competed and are subject to all FTA piggybacking requirements.

Corrective Action: Omnitrans will revise its policies and procedures with regards to piggybacking to include updated FTA requirements (FTA C4220.1F, rev 3) and instructions on buying off of GSA contracts. Training will be conducted on June 13, 2013 (See Exhibit D). Compliance will be verified within thirty (30) days from the date of the final report (See Exhibit E).

Element (56) Clauses

Basic Requirement: Chapter IV, Section 2 and Appendix D of FTA C 4220.1F indicate that:

- A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement.
- Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement.

Discussion: Of the thirty-two (32) procurements reviewed for this requirement, twenty-two (22) were found to be deficient and ten (10) were not deficient. There were a variety of reasons for clause deficiencies. In some cases, Omnitrans had inserted Best Practice Procurement Manual discussions about clauses rather than designing concrete clauses based on the manual guidance. The Best Practices Procurement Manual should be used only as a guide in the development of clauses. In other cases, the Access to Records clause utilized in contracts did not grant direct access to records by the FTA and federal government. Finally, several purchase orders incorporated clauses by reference to the Omnitrans website without actually having FTA clauses available online.

Corrective Action: Federal clauses were posted on the Omnitrans website on April 17, 2013. It should be noted that 21 of the 22 procurements with deficiencies were awarded on or before April, 2012. Omnitrans respectfully disagrees with the deficiency on the remaining IFB and has attached supporting documentation (See Exhibit J). Training will be provided on June 13, 2013 (See Exhibit D). Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter (See Exhibit E).



Price Analysis/Reasonableness

PO/Contract#: _____

Project Name:

Vendor Name:

Dollar Value:

Description:

Rationale:

Analysis: Prices for this PO/Contract were reviewed by the Contract Administrator and determined to be fair and reasonable for the following reason(s):

- Award based on lowest, responsive and responsible bid received - see attached quotes
- Compared with prices paid for similar goods or services
- Award based on availability (as stated in procurement docs)
- Pricing deemed reasonable based on past purchase history attached

Contract Administrator

Procurement Director/Manager

Revised: 02-6-13



Responsibility Determination Form

PO/Solicitation #: _____

Supplier: _____

Date: _____

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

	Acceptable	Comment
1. Appropriate financial equipment, facility, and personnel	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
2. Ability to meet the delivery Schedule	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
3. Satisfactory period of Performance	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
4. Satisfactory record of integrity, not on declined or suspended listings	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
5. Receipt of all necessary data from supplier	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____

Procurement

Revised: 01-08-13

Project Manager



PROCUREMENT HISTORY

Procurement Title: _____

Procurement Number: _____

Received ICE (Independent Cost Estimate) **DATE:** _____
\$ _____

Procurement Method (Attach Method of Procurement Decision Matrix)

- RFP
- RFQ
- IFB
- Sole Source (justification attached)

Contract Type (Check appropriate type)

- Firm Fixed**
- Cost Reimbursement**
- Time and Materials**

***Cost Plus Contracts are Prohibited by the Federal Transit Administration (FTA)**

Vendor/Contractor Selection (Describe method and rationale for selection) (e.g. - This project was released as an Invitation for Bid as staff required a specific product or service and was advertised in public newspapers of general circulation.)

- Cost /Price Analysis**
 - Cost Analysis (Sole Source justification if applicable)
 - Price Analysis (quotes to analysis attached)
- Price Reasonableness** (Information Attached)
- Responsibility Determination Form (Attached and completed)**
- Small Purchase Checklist (If applicable)**

Details of Procurement	
Date	Description and Details

Revised: 01-08-13



Details of Procurement

Revised: 01-08-13



METHOD OF PROCUREMENT DECISION MATRIX

To best determine which method of procurement is suitable, classify your situation by checking off the appropriate boxes below in each of the procurement methods below. All elements must apply that use that method.

<input type="checkbox"/> Independent Cost Estimate (Attached for every procurement over \$3,000)	
I. Mini-Purchase <input type="checkbox"/> Amount \$3,000 to \$25,000 <input type="checkbox"/> Three or more vendor quotes available	IV. Sole Source <input type="checkbox"/> OEM, Custom Item <input type="checkbox"/> Only once Source Available <input type="checkbox"/> Approved by FTA – Sole Source <input type="checkbox"/> Public exigency issue/emergency <input type="checkbox"/> Competition is inadequate after public solicitation (If all elements apply, continue to Emergency Procurement below)
II. Small Purchase <input type="checkbox"/> Amount \$25,001 to \$100,000 <input type="checkbox"/> Three or more vendor quotes (Competitive Procurement)	<u>Emergency Procurement</u> (Subset of Sole Source) <input type="checkbox"/> This is a health and safety issue that prohibits delay
III. Competitive Procurement <input type="checkbox"/> Amount <input type="checkbox"/> Multiple Sources Available <input type="checkbox"/> Not an Emergency Purchase	
A. <u>Sealed Bid – Invitation For Bid (IFB)</u> <input type="checkbox"/> Complete & adequate specifications or purchase description <input type="checkbox"/> Two or more responsible bidders willing to complete <input type="checkbox"/> Selection can be made on basis of price <input type="checkbox"/> Procurement suitable for firm, fixed price	
B. <u>Informal Competitive Bidding – Request for Quotation (RFQ)</u> <input type="checkbox"/> Complete & adequate specifications or purchase description <input type="checkbox"/> Does not require complicated solicitation evaluation	
C. <u>Competitive Proposals – Request for Proposal (RFP)</u> <input type="checkbox"/> Complete specification not feasible <input type="checkbox"/> Bidder input needed for specification <input type="checkbox"/> Two or more responsible bidders willing to compete <input type="checkbox"/> Discussion needed with bidder offer receipt of proposals, prior to award	

Revised: 01-08-13

OMNITRANS PROCUREMENT PLAN

Section I: REQUEST (To be completed by requesting Department)			
Description of Proposed Acquisition	Target Start Date	Requested Term (<i>Base/Options Years</i>)	
Project Manager		Date	
Section II: Funding			
Funding Source(s)	Federally funded: <input type="checkbox"/> Yes <input type="checkbox"/> No	Budgeted: <input type="checkbox"/> Yes <input type="checkbox"/> No	Funding Verified by (name):
Section III: Procurement Method (To be completed by Procurement Department)			
Solicitation Number:	Date Received:	When Needed:	
Section IV: Method of Acquisition		Section V: Type of Contract	
<input type="checkbox"/> RFP (Request for Proposals) <input type="checkbox"/> IFB (Invitation for Bids) \$100,000+	<input type="checkbox"/> Non-competitive (Sole Source) <input type="checkbox"/> Small Purchase (RFQ) >\$3,000 - <\$100,000	<input type="checkbox"/> FFP (Fixed Contract Price) <input type="checkbox"/> T&M <input type="checkbox"/> Cost Plus Fixed Fee	
Section VI: Procurement Schedule (To be completed by Procurement in conjunction with user Dept.)			
ACTIVITY	TARGET DATE		
Independent Cost Estimate (ICE) Received			
Scope of Work (SOW) – Specification			
Final Draft of Bid Documents			
Board Approval to Release (\$100,000+)			
Release: Posted online, Newspaper Advertisements			
Pre-Bid/Proposal Conference	Date:	Location:	
Deadline for Questions/Requests for Approved Equals			
Final Addenda			
Bid Closing/Proposals Due			
Prevailing Wage Lock-in Date			
Review for Responsiveness			
Technical Evaluation			
Face-to-face Discussions/Demonstrations/Presentation			
Price and Cost Analysis			
Negotiations/Best & Final			
Responsibility Determination			
Basis of Award			
Board Approval			
Procurement Documentation (Award)			
Protest Period Ends			
Insurance Documents/Bonds Received			
Contract Executed			
Notice to Proceed			
Debarred List/References			

Procurement Plan Reviewed and Approved

Project Manager Signature _____ **Date** _____

Procurement Staff Signature _____ Date _____

Procurement Manager Signature Date



Revised 05-06-13

Procurement Process Dec. 2012



Presented by:
Jennifer M. Sims, C.P.M., Director of Procurement
Eugenio Pinheiro, Contracts Manager



Training Objectives

- Dispel the Myths about Procurement
- General Overview of Procurement Process
- Detailed Training:
 - Independent Cost Estimates (ICE)
 - Procurement Plan
 - Sole Source Justification



Training Objectives

- Preparing for PSR
- Next Training Topics
- Q&A



Myth #1

Requisitions and Shopping Carts
Are Submitted after the Invoice is Received

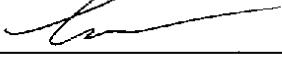
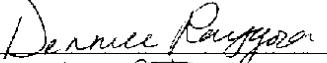
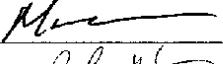
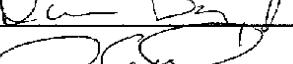
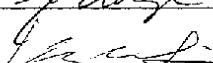
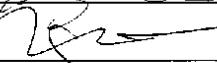
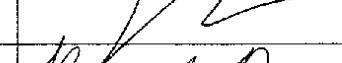


Myth #2

Independent Cost Estimates (ICE) were
Developed and Introduced to Omnitrans by our
new Procurement Director & Manager



PROCUREMENT TRAINING
 WEDNESDAY, December 12, 2012

Print Name	Signature	Department
Frank Flores		Procurement
Dennice Ruygoza		Procurement
Brenda Ramirez		Planning
Mark Crosby		Safety & Security
Dennis Lien		ITS
Alex Che		27S
Don Bang		Proc
matchGrault		Maint
Craig Chais		Maint
Bonnie Judge		mrc
Bon Lien		ITS
May Shen		27S
J Dooly		MTC
W Tsai		27S
Ben Green		IT.S.
Brenda Rosas		Safety & Security



PROCUREMENT TRAINING
WEDNESDAY, December 12, 2012

Print Name	Signature	Department
Bob Miller	Bob Miller	CFO
Victoria Chesney	Vicki Chesney	MFC
MARK MONTGOMERY	Mark Montgomery	MAINT
John Geusek	John Geusek	Maint
OSCAR LESTADO	Oscar Lestado	Maint
ONAR BRYANT	Onar Bryant	MAINT.
MILE BONACIO	Mile Bonacio	Maintenance



**PROCUREMENT TRAINING
WEDNESDAY, December 12, 2012**

Print Name	Signature	Department
Mae Sung		Finance

Myth #3

It takes 18 to 24 months to procure Simple Products or Services



Myth #4

"Price Reasonableness" isn't required For purchases under \$3,000 or When using the P-Card.



Myth #5

ICE & Sole Source Justifications are not needed for Change Orders or Amendments

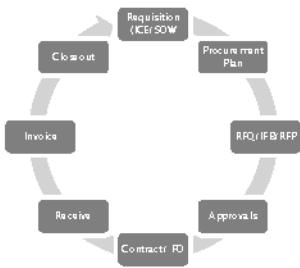


Myth #6

Omnitrans Procurement has Successfully Passed all of its Audits.



General Overview



INDEPENDENT COST ESTIMATE (ICE)

An ICE is prepared before the receipt of offers does not raise the question of whether the particular date and related analysis was consciously or unconsciously intended to justify the award.



INDEPENDENT COST ESTIMATE *(Continued)*

*...in connection with **EVERY** procurement over the Mini-purchase threshold (\$3,001 and above) ...grantees must make independent estimates **before** receiving bids or proposals.*

(FTA C4220.1F, Ch. VI, 6)



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INDEPENDENT COST ESTIMATE *(Continued)*

- ▶ Independent cost estimate
- ▶ Published competitive pricing
- ▶ Results of competitive procurements
- ▶ Estimates by in-house or outside estimators
 - ✓ ICE must be dated before bid process begins



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INDEPENDENT COST ESTIMATE *(Continued)*

- ▶ Published competitive prices
- ▶ Results of competitive procurements
- ▶ Estimate by in-house or outside estimators
- ▶ Must be dated



15

INDEPENDENT COST ESTIMATE *(Continued)*

- Purpose
- ▶ Clear basis for determination of benefits
 - ▶ Essential procurement and financial planning
 - ▶ Provides a basis for price analysis
 - ▶ Flags possible scope creep



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Procurement Plan

- ▶ Review ICE & SOW
- ▶ Determine Procurement Method
- ▶ Develop Mutually Agreed Upon Schedule



17

PROCUREMENT PLAN *(Continued)*

- ▶ Project Manager (PM) Initiates request for goods or services
- ▶ Contracts Manager or Director assigns Contract Administrator (CA)
- ▶ PM provides Independent Cost Estimate (ICE) and Scope of Work (SOW)



18

Sole Source Procurements

(b) **Sole Source Justification.** If the recipient decides to solicit an offer from only one source, the recipient must justify its decision adequately in light of the standards of subparagraph 3.i(1)(b) of this Chapter. FTA expects this sole source justification to be in writing.



Procurement System Review (PSR)



QUESTIONS



EXHIBIT C Brand
Name Restrictions

OMNITRANS
1700 WEST FIFTH STREET
SAN BERNARDINO, CA 92411-2499
BRT 60/FT STYLIZED LOW FLOOR ARTICULATED CNG COACHES
RFP-PLN10-12
SECTION I

procedures, the alleged failure of the Agency to review a protest, or the alleged violation of Federal law or regulation.

Alleged violations of certain federal requirements provide a separate complaint procedure. See, for example, Buy America Requirements, 49 CFR 661 (Section 661.15) and Participation by Disadvantaged Business Enterprise in Department of Transportation Programs, 49 CFR 23 (Section 23.73).

Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

IP11 Preparation of Proposals

IP 11.1 Use of Proposal Forms

Proposers are advised that the forms contained in this RFP are the forms required to be used for submission of a Proposal. Each Proposal shall be on the prescribed Proposal Form(s) and shall be for the entire Contract including all Proposal Items. The Proposal Forms(s) are available in Microsoft Word. To request the Microsoft Word documents, forward an email to janet.williams@omnitrans.org or Christine.vanmatre@omnitrans.org.

IP 11.2 Alternate and “or equal products” or methods Proposals

Proposers may submit alternate Proposals to this RFP. The Agency reserves the right to accept or reject any alternate Proposal.

A. Alternate proposals shall meet the requirements of the Specification section, and other requirements as set forth herein.

B. Listing of proposed “or-equal” items or methods.

1. With consideration of the additional evaluation time necessary for the Agency review of such items, indicate for each “or-equal” item the product or method name and description (include product cut-sheets or method specifics), purpose for submission, item’s advantages and disadvantages, how the item will affect the project in cost and schedule requirements, and estimated time required to implement the proposed item.
2. The Agency may return unreviewed those submissions (i) not as specified herein, (ii) which are incomplete, (iii) not submitted in accordance with the Solicitation Document’s specified schedule, or (iv) which are uncertified by the proposed “or-equal” manufacturer or company, in which case Contractor shall provide the specified product.

C. Submit six copies of proposed “or-equal” item/method for review in accordance with this Solicitation..

D. Disposition of “Or-Equal” Item/Method:

OMNITRANS
1700 WEST FIFTH STREET
SAN BERNARDINO, CA 92411-2499
BRT 60/FT STYLIZED LOW FLOOR ARTICULATED CNG COACHES
RFP-PLN10-12
SECTION I

1. Accepted: The Agency will evidence such acceptance by approval of an amendment for Proposer and the Agency's execution. Such Amendment will accompany the Agency's evaluation and acceptance of Proposer's "Or-Equal" offer.

2. Rejected:
 - a. One (1) copy retained by the Agency
 - b. One (1) copy returned to Contractor with a commentary by the Agency.
 - c. Remaining copies will be destroyed.

IP 11.3 Proposal Format Requirements

- A. Proposals shall be submitted in four (4) separately sealed packages identified below. Each package shall be marked as specified below and shall contain all of the Proposal documents for which the package is required to be marked and no other documents. These same requirements shall apply to any Best and Final Offers which may be requested. Proposals *must* comply with:
 - 1) The terms and conditions of this RFP; and
 - 2) The Agency authorized amendments, if any.

- B. Proposals *must* be submitted:
 - 1) As described in the Proposal Format section and may NOT be faxed.
 - 2) In quadruplicate:
 - a) One (1) marked "ORIGINAL" and
 - b) Four (4) copies marked "COPY"
 - 3) By no later than as set forth in the Schedule. Proposals received after this time and date will be rejected and returned to the proposer unopened.
 - 4) Proposals must be bound in three ring binders with dividers separating the sections, and organized in the order listed below.
 - 5) You must include any other information required by this RFP or its amendments, which may not be listed below.
 - 6) You may include additional information, however, do not attach terms and conditions that conflict with the RFP as this can render your proposal non-responsive.

- C. Proposals *may* be submitted as follows:
 - 1) You may offer supplemental or additional information and services, however the Agency is not obligated to pay for or use these additional information or services.
 - 2) If your supplement is accepted and evaluated as part of the proposal, you will be required to provide those services, if the Agency elects to use them.

OMNITRANS
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SECTION I

IP 6 Questions and Clarifications

All correspondence, communication, and/or contact in regard to any aspect of this solicitation or offers shall only be with the contact person identified in **Section 1 RFP** (*or their designated representative*). Proposers and their representatives shall not make any contact with or communicate with any member of the Agency, or its employees and consultants, other than the contact person in regard to any aspect of this solicitation..

At any time during this procurement, and up to the time specified in **IP2 Proposed Schedule for the Procurement**, Proposers may request, in writing, a clarification, or interpretation of any aspect, or a change to any requirement of the RFP or any addenda to the RFP. Requests may include suggested substitutes for specified items and for any brand names, which whenever used in this solicitation shall mean the brand name or approved equal. Such written requests shall be made to the contact person. The Proposer making the request shall be responsible for its proper delivery to the Agency as identified in **Section 1 RFP** on the form **CER 2.0 Request for Pre-Offer Change or Approved Equal**. Any request for a change to any requirement of the Contract documents must be fully supported with technical data, test results, or other pertinent information evidencing that the exception will result in a condition equal to or better than that required by the RFP, without substantial increase in cost or time requirements.

Any response which is not confirmed by a written addendum shall not be official or binding on the Agency. Any responses to such written requests shall be provided by the Agency in the form of addenda only. All responses to **CER 2.0 Request for Pre-Offer Change or Approved Equal** shall be provided to all Proposers. Only written responses provided as addenda shall be official and all other forms of communication with any officer, employee, or agent of the Agency shall not be binding on the Agency.

If it should appear to a prospective Proposer that the performance of the Work under the Contract, or any of the matters relating thereto, is not sufficiently described or explained in the RFP or Contract documents, or that any conflict or discrepancy exists between different parts thereof or with any federal, state, local or Agency law, ordinance, rule, regulation, or other standard or requirement, then the Proposer shall submit a written request for clarification to the Agency within the time period specified in **IP 2 Proposed Schedule for the Procurement**

IP 7 Addenda to RFP

The Agency reserves the right to amend the RFP at any time in accordance with **IP 2**. Any amendments to or interpretations of the RFP shall be described in written addenda. The Agency shall provide copies of Addenda to all prospective Proposers officially known to have received the RFP. Prospective Proposers, or their agents, shall be responsible to collect the addendum at the address provided in **Section 1 RFP**. Notification of or the addendum will also be distributed to all such prospective Proposers officially known to have received the RFP. Failure of any prospective Proposer to receive the notification or addendum shall not relieve the Proposer from any obligation under its Proposal as submitted or under the RFP, as clarified, interpreted, or modified. All addenda issued shall become part of the RFP. Prospective

Omnitrans RFP-PLN10-12

60-FT Stylized BRT CNG Coaches

Requests for Information and Approved Equal

Request No.	Contract/Tech	Page	Section	Questions/Clarification/Approve Equal/Deviation	Request Type	Manufacturer Proposal	Omnitrans Response
8	Technical	Page: 15	Section: A,1	Approve Equal	Floor - Material	Manufacturer requests approval to provide Greenwood Forest, XL? ACQ Bus Panel ¼ in. Plywood Flooring that is undercoated with Corashield for superior protection against the elements.	Approved
10	Technical	Page: 16	Section: B, 2	Approve Equal	Strength	Manufacturer requests approval to supply the plywood vendor approved fasteners used to retain the plywood to the structure. A Robertson flathead, thread cutting type F screw that is coated with Magni 599 which is ACQ compatible. A limited number of fasteners are used as the plywood is mainly retained by adhesive.	Approved as long as the fasteners are serviceable from one side only.
25	Technical	Page: 27	Section: D, 1	Approve Equal	Headlights	Manufacturer requests approval to provide a headlight system which is a combination of LED and halogen lights as manufactured by J.W. Speaker.	Please provide specification/mfr. Information.
30	Technical	Page: 29	Section: M, 1	Approve Equal	Passenger Interior Lighting	Manufacturer requests approval to provide a Pretoria interior lighting system which is programmable, however the system will not automatically adjust the interior luminance when the wipers are turned to their high speed mode.	Denied
48	Technical	Page: 47	Section: B, 5)	Approve Equal	Driver's Window	Manufacturer requests approval to provide the driver's side window manufactured from Solexia which will be tempered glass with 77% light transmittance. This would be the same as the 40 foot order.	Approved
51	Technical	Page: 48	Section: E, 1)	Approve Equal	Passenger and Driver Windows G	Manufacturer requests approval to provide StormTite Windows with PPG Azuria glass which shall provide similar results and provided on the 40 foot order.	Denied
56	Technical	Page: 64	Section: E.4)	Approve Equal	Lines and hoses	Manufacturer advises that standard for hose specification FMVSS 106 has been updated to Aerquip FC355: Coolant vent line - FC355; Fuel lines - FC355; Suction line - FC355; Air line - FC355; Engine and Trans oil - FC355	Denied. Please clarify, FMVSS 106 specifies air brake lines only. Please note: CNG fuel lines are rated at 4000psi

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Omnitrans RFP-PLN10-12

60-FT Stylized BRT CNG Coaches

Requests for Information and Approved Equal

Request No.	Contract/Tech	Page	Section	Questions/Clarification/Approve Equal/Deviation	Request Type	Manufacturer Proposal	Omnitrans Response
58	Technical	Page: 67	Section: L.2), M, 5)	Approve Equal	Couplings	Manufacturer requests approval to provide the Hutchinson exhaust bellow which is located between the engine and the muffler as per Manufacturer's design.	Approved
59	Technical	Page: 68	Section: F, 1	Approve Equal	Air Filter Restriction Indicator	Manufacturer requests approval to provide a Donaldson Electrical Air Restriction Gauge.	Denied
62	Technical	Page: 69	Section: I, 1)	Approve Equal	Radiator	Manufacturer requests approval to provide its' standard cooling package consisting of a Thermasys radiator that is mounted at the rear street side corner of the bus	Denied
63	Technical	Page: 70	Section: I, 9)	Approve Equal	Radiator	Manufacturer requests approval to provide its' standard cooling package consisting of a Thermasys radiator that is cooled with an hydraulically operated fan system which will provide adequate cooling of the engine and transmission during ambient operating temperatures between 30 and 120 degrees F	Denied
64	Technical	Page: 71	Section: A.1)	Approve Equal	Rear axle	Manufacturer requests approval to provide front and rear axles manufactured by M.A.N and fitted with disc brakes. The rear axle shall be the single reduction type with a 4.625 ratio.	Approved
66	Technical	Page: 74	Section: B.1)	Approve Equal	Steering Design	Manufacturer requests approval to replace steering column with the most current Douglas 929.	Please provide specification/mfr. Information.
76	Technical	Page: 79	Section: G, 1)	Approve Equal	Air Dryer	Manufacturer's proposal is based on providing a dual (tandem) Bendix air dryer setup.	Approved
80	Technical	Page: 80	Section: B.3)	Approve Equal	Fueling	Manufacturer requests approval to use the Allen Bradley 871TM-DHSN18-H2 cut out switch. This is our standard switch and provided on the last order.	Approved
85	Technical	Page: 84	Section: C.13)	Approve Equal	Wiring and terminals	Manufacturer requests approval to provide ultrasonic splices on few J1939 body harnesses application.	Approved

2 of 3

Omnitrans RFP-PLN10-12

60-FT Stylized BRT CNG Coaches

Requests for Information and Approved Equal

Request No.	Contract/T technical	Page	Section	Questions/Clarification/Ap rove Equal/Deviation	Request Type	Manufacturer Proposal	Omnitrans Response
86	Technical	Page: 104	Section: A, 2)	Approve Equal	Climate Control - General	Manufacturer requests approval to provide a Thermo King RLF roof top system on the tractor (front) unit and a T11 rear mount system on the trailer (rear) unit. The front RLF system is designed for the Xcelsoir and is recessed part way in the frame structure allowing better air movement.	Clarify the refrigerant type in the TK system.
87	Technical	Page: 105	Section: A, 11	Approve Equal	Climate Control - General	Manufacturer requests approval to provide a Thermo King X640 refrigerant compressor.	Clarify the refrigerant type in the TK system.
89	Technical	Page: 105	Section: C.2)3)	Approve Equal	Cooling	Manufacturer requests approval to provide the following HVAC system pull down for our 60-foot bus, Manufacturer is requesting 110° to 75° (+/- 3° degrees) in 40 minutes at ¼ engine speed and no solar load and no passengers. This is using R407C refrigerant. It is anticipated that air flow should better in the front area with the RLF unit designed for the coaches and in the rear area which has conditioned air provided by a TK T-11 system.	Contingent on HVAC system selection.
90	Technical	Page: 105	Section: D.1)2)	Approve Equal	Heating	Manufacturer requests approval to provide the EBM brushless motors supplied by Thermo King.	Contingent on HVAC system selection.
91	Technical	Page: 106	Section: A., 1)	Approve Equal	Horn	Manufacturer requests approval to provide one heavy-duty 13-volt, FIAMM Technologies, AM-80S dual horn.	Approved

3 of 3

Procurement Team – Corrective Action Training Agenda

Thursday, June 13, 2013, 1:00 p.m. – 5:00 p.m.
IT Training Room

1. Element 16 - Written Selection Procedures
2. Element 21 -Fair and Reasonable Price Determination (Micro)
3. Element 24 -Clear and Accurate Specifications
 - Telephone quotes
 - Procedure 2030-1, 2.1.2
4. Element 32 - Bid Opening [Sealed Bids]
 - New Form
5. Element 36 – Evaluation [RFP]
6. Element 38 - Sole Sources If other award is inadequate
7. Element 39 - Cost Analysis Required [Sole Source]
8. Element 40 - Evaluation of Options
9. Element 41 –Cost or Price Analysis
10. Element 42 - Written Record of Procurement History
 - Procurement History
 - Procurement Plan
11. Element 43 – Exercise of Options
12. Element 44 - Out of Scope Changes
13. Element 47 – Time and Materials Contracts
 - No other contract type is suitable
 - Firm Ceiling Price
14. Element 48 – Cost Plus Percentage of Cost – strictly prohibited
15. Element 50 - Piggybacking
16. Element 56 - Clauses
 - Regulatory Requirements

EXHIBIT E
2013 PSR Corrective Action Compliance Schedule

Corrective Action Follow-Up

Element (7) Independent Cost Estimates

A review of compliance is scheduled within the 30 days after receipt of the final report.

Element (13) Brand Name Restrictions

A review of compliance is scheduled within the 30 days after receipt of the final report.

Element (16) Written Procurement Selection Procedures

A review of compliance is scheduled within the 30 days after receipt of the final report, and annually thereafter.

Element (18) Award to Responsible Contractors

Compliance will be verified by conducting an internal audit of procurements within thirty (30) days from the date of the final report.

Element (21) Fair and Reasonable Price Determination [Micro-Purchases]

Compliance will be verified by conducting an internal audit of Micro-Purchases within thirty (30) days from the date of the final report.

Element (24) Clear and Complete Specifications

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Element (32) Bid Opening [Sealed Bid]

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Element (36) Evaluation [RFP]

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Element (38) Sole Source If Other Award Is Inadequate

EXHIBIT E
2013 PSR Corrective Action Compliance Schedule

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Element (39) Cost Analysis Required [Sole Source]

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Element (40) Evaluation of Options

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Element (41) Cost or Price Analysis

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Element (42) Written Record of Procurement History

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Element (43) Exercise of Options

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Element (44) Out of Scope Changes

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Element (47) Time and Materials Contracts

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Element (48) Cost Plus Percentage of Cost

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Element (50) Piggybacking

EXHIBIT E
2013 PSR Corrective Action Compliance Schedule

A review of compliance is scheduled within the 30 days after receipt of the final report.

Element (56) Clauses

Compliance will be verified by undergoing an internal audit of the files within thirty (30) days from the date of the final report, and annually thereafter.

Week One after final report:

Reviews- Individual reviews will be conducted in these four areas during week one.

- Element (7) Independent Cost Estimates
- Element (13) Brand Name Restrictions
- Element (16) Written Procurement Selection Procedures
- Element (50) Piggybacking

Week Two:

Audit- An audit will be conduct that includes these three areas in the scope.

- Element (48) Cost Plus Percentage of Cost
- Element (47) Time and Materials Contracts
- Element (44) Out of Scope Changes

Week Three:

Audit- An audit will be conducted that includes theses seven areas in the scope

- Element (24) Clear and Complete Specifications
- Element (36) Evaluation [RFP]
- Element (38) Sole Source If Other Award Is Inadequate
- Element (39) Cost Analysis Required [Sole Source]
- Element (40) Evaluation of Options
- Element (41) Cost or Price Analysis
- Element (42) Written Record of Procurement History

Week Four:

Audit- Separate audit will be conduct on this area

EXHIBIT E
2013 PSR Corrective Action Compliance Schedule

Element (21) Fair and Reasonable Price Determination [Micro-Purchases]*J*

Audit- An audit will be conducted that includes these two areas in the scope.

Element (32) Bid Opening [Sealed Bid

Element (43) Exercise of Options



Sole Source Justification and Approval Form

Reference: Omnitrans Procedure 4050-1, Sections 1.1.1 and 2.2.1.

1. Estimated contract amount: \$ 13,086.37

2. Recommended supplier name, address, and contact information:

Gary Carlin
Carlin Environmental Consulting, Inc.
2269 S. Ritchey Street
Santa Ana, CA 92605

3. Description of requested items or services and their purpose (Attach additional sheets as necessary):

4. Justification for request:

- Original or unique manufacturer or provider; no other local sources exist.
- Source is sole distributor for original manufacturer.
- Parts or equipment not interchangeable with similar parts or equipment from other manufacturer(s).
- Only known item or service matching the requested needs or performing the intended task.
- Sole provider of a licensed or patented good or service.
- Sole provider of items compatible with existing equipment, inventory, systems, programs, or services.
- Sole provider of goods or services established as standard (Please provide evidence of such a standard).
- Sole provider of factory authorized warranty service.
- Used item representing good value and advantage.
- None of the above applies. A detailed explanation and justification for this sole source request is attached (See Notes).

5. Explain why the product or service requested is the only one that can satisfy your requirements, as well as why alternatives are unacceptable. Be specific with regard to specifications. Use additional sheets as necessary.

Requested by: Jason Lee	Department: IPMO
Prepared by: Jason Lee	Date: 11/22/10
I hereby certify that, to the best of my knowledge, the above justification is accurate and request that a sole source be approved for the procurement of the above requested item(s) or service(s).	

Signature:

Date: 2/16/11

**THIS SECTION FOR USE BY OMNITRANS PROCUREMENT DEPARTMENT
ONLY**

Requisition Number:

Approved

Not Approved

Reason for Non-Approval:

Name:

Signature:

Date:

3/18/2011

Notes: The Methane Detection System (MDS) located at the EV maintenance facility was noted by the selected EV modification designer as possibly inadequate. The designer subsequently proposed to design a MDS upgrade for \$153K. Staff elected to obtain a methane detection specialist to evaluate and prepare plans of the existing MDS for submittal to the governing agencies like City Building or City / County Fire Departments for review and approval. Staff reached out to two known methane detection specialty companies – Carlin Environmental Consulting, Inc. (CEC) and Methane Specialists for initial evaluation and service estimate (Please see attached email communication history). CEC was the only responsive and responsible proposer to attend the job walk and submit a proposal. Please see attached proposal from CEC.

Jason Lee

From: Mark Montgomery
Sent: Monday, November 22, 2010 6:36 PM
To: Chris M. Conahan
Subject: FW: Omnitrans Methane Detection System Evaluation
Attachments: Omnitrans_EV_Wiring Diagrams_Original & Existing MDS.pdf; Omnitrans_EV_Demo of Original MDS System.pdf; Omnitrans_EV_Existing MDS System Info.pdf; Omnitrans_EV_Existing MDS System Layout.pdf; E-150.dwg; M420-B.DWG; M210-B.DWG; M220-B.DWG; M230-B.DWG; M250-B.DWG; Omnitrans Methane Detection Systems.doc

Chris, it looks like the first attempt to e-mail you came back un-deliverable. Hopefully this one goes through.

Mark Montgomery
Facility Manager
Omnitran
1700 West 5th Street
San Bernardino, CA 92411

Work (909) 379-7175
Fax (909) 379-7375
Cell (951) 634-2435
Mark.Montgomery@Omnitran.org

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From: Mark Montgomery
Sent: Monday, November 22, 2010 5:59 PM
To: 'Chris M. Conahan'
Cc: Jason Lee; Milind Joshi; Jack Dooley; Ernesto DeGuzman; Christine Van Matre
Subject: RE: Omnitrans Methane Detection System Evaluation

Chris, as discussed, here is some information about our original system installed back in 1999 when the building was built, and what it looks like today after being replaced in 2004. As mentioned we are looking for a consultant such as yourself to come out and survey the system to see if it is sufficient based on known codes/standards. Please review and provide a cost for Methane Specialists to come out and evaluate.

Please call or e-mail if any questions.

Thanks!

Mark Montgomery
Facility Manager
Omnitran
700 West 5th Street
San Bernardino, CA 92411

✉ Work (909) 379-7175
✉ Fax (909) 379-7375
✉ Cell (951) 634-2435
✉ Mark.Montgomery@Omnitrans.org

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From: Chris M. Conahan [mailto:cconahan@methanespecialists.com]
Sent: Monday, November 22, 2010 3:15 PM
To: Mark Montgomery
Subject: contact

<p>Chris M. Conahan Methane Specialists President (805) 987-5356 Work (805) 857-8927 Mobile cconahan@methanespecialists.com 621 Via Alondra Suite 610 Camarillo, CA 93012 www.methanespecialists.com</p>
--

Jason Lee

From: Mark Montgomery
Sent: Monday, November 22, 2010 6:29 PM
To: Jason Lee; Milind Joshi; Jack Dooley; Ernesto DeGuzman; Christine Van Matre
Subject: RE: Omnitrans Methane Detection System Evaluation
Attachments: Carlin-Environmental-cnsI.pdf; Methane Specialists.pdf

In my discussion with Gary Carlin of Carlin Environmental, he felt that he could conduct the survey for approximately \$1000. We went ahead and set up his visit for Monday 11/29/10 around 12 noon. (Jason & Milind feel free to join us if available)

Note – Carlin's approach seems to blend engineering and administrative "fixes" to satisfy the authorities having jurisdiction. He shared that the local Fire Departments seem to have limited knowledge of methane detection systems, and often look to the consultants to engineer acceptable systems. The other company, Methane Specialists seems to take more of an engineering approach taking into account NFPA and DOT regulations/guidelines. Methane Specialists quotes similar items that STV mentions in their proposal. I am waiting for a proposal from Methane Specialist to see how much it would cost for them to come out as well, and perform a survey of the system. If their cost is also less than \$3000, it may be worth it to have two surveys to compare options.

Mark Montgomery
Facility Manager
Omnitran
1700 West 5th Street
San Bernardino, CA 92411

✉ Work (909) 379-7175
- Fax (909) 379-7375
- Cell (951) 634-2435
✉ Mark.Montgomery@Omnitran.org

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From: Mark Montgomery
Sent: Monday, November 22, 2010 6:06 PM
To: 'Gary Carlin'
Cc: Jason Lee; Milind Joshi; Jack Dooley; Ernesto DeGuzman; Christine Van Matre
Subject: FW: Omnitrans Methane Detection System Evaluation

Gary, as discussed, here is some information about our original system installed back in 1999 when the building was built, and what it looks like today after being replaced in 2004. As mentioned we are looking for a consultant such as

yourself to come out and survey the system to see if it is sufficient based on known codes/standards. As agreed, I will see you on Monday 11/29/10 around noon to discuss further.

Please call or e-mail if any questions.

Thanks!

Mark Montgomery
Facility Manager
Omnitrans
1700 West 5th Street
San Bernardino, CA 92411

✉ Work (909) 379-7175
Fax (909) 379-7375
Cell (951) 634-2435
✉ Mark.Montgomery@Omnitrans.org

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RATIONALE FOR METHOD OF PROCUREMENT

To: Contract File – IPMO11-24

Type of Procurement: Sole Source (see attached sole source justification)

Contractor: Carlin Environmental Consulting Services Inc.

Other than Full and Open Competition:

1. Government Code Section 53060. The legislative body of any public or municipal corporation or district may contract with and employ any persons for the furnishing to the corporation or district special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required. The authority herein given to contract shall include the right of the legislative body of the corporation or district to contract for the issuance and preparation of payroll checks. The legislative body of the corporation or district may pay from any available funds such compensation to such persons as it deems proper for the services rendered.
2. After review of the technical approach by Omnitrans (staff), validation of Carlin's Environmental Consulting Inc. proposal, and the Independent Cost Estimate in conjunction with the contract requirements; staff determined that a Time and Material Change Order was the best approach.
3. Staff conducted a fair cost estimate on the hours to be provided for project assistance during the bidding, RFI, construction and closeout process of the project. The FCE came in higher than the consultants cost estimate. The net difference is \$450.00.



APPROVED

DATE: June 4, 2008

TO: Board Chair John B. Roberts, Jr. and Members of the Omnitrans Board of Director

THROUGH: Durand L. Rall, CEO/General Manager

FROM: Rohan Kuruppu, Director of Planning

Ernesto DeGuzman, Director of Procurement

**SUBJECT: AUTHORIZE AWARD OF CONTRACT PLN08-1, E STREET sbX BUS
RAPID TRANSIT (BRT) CORRIDOR PROJECT, PROJECT
DEVELOPMENT PHASE – ARCHITECTURAL AND ENGINEERING,
ENVIRONMENTAL CLEARANCE, PRELIMINARY ENGINEERING
AND FINAL DESIGN**

FORM MOTION

Authorize the CEO/General Manager to award contract PLN08-1, for an amount not to exceed \$14,706,228.65, to Parsons Transportation Group, Inc., of Ontario, California, for the provision of transit planning, public relations, architectural and engineering, environmental clearance, preliminary engineering and final design services for the E Street sbX Bus Rapid Transit (BRT) Corridor Project, Project Development Phase. The contract value of \$14,706,228.65 includes negotiated pricing for optional scopes of design services during construction, planning studies and reports after revenue operation, and final design of two station locations at California State University San Bernardino and Rialto Transcenter of \$449,494.52. The Notice to Proceed will be issued on June 11, 2008 and all work will be completed within five (5) years.

SUMMARY AND BACKGROUND

On February 4, 2004, the Board of Directors authorized the CEO/General Manager to award Phase I of this E Street Bus Rapid Transit Corridor Project to Parsons Transportation Group, Inc., for a comprehensive Major Investment Study (MIS).

The MIS resulted in selecting the Locally Preferred Alternative (LPA) with broad local support in the corridor, both from key stakeholders and the general public. The LPA has been adopted by the Omnitrans Board of Directors and the San Bernardino Associated Governments (SANBAG) Board. Both the San Bernardino and Loma Linda City Councils have approved the LPA as well. The Southern California Association of Governments (SCAG), and the Metropolitan Planning Organization (MPO) for the Los Angeles region, took action to amend the Regional Transportation Plan (RTP) in July 2006 to include the LPA.

Omnitrans • 1700 West Fifth Street • San Bernardino, CA 92411
Phone: 909-379-7100 • Web site: www.omnitrans.org • Fax: 909-889-5779

Serving the communities of Chino, Chino Hills, Colton, County of San Bernardino, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland and Yucaipa.

On May 31, 2007, Omnitrans submitted the application to the Federal Transit Administration (FTA) seeking permission to enter the Project Development Phase of the LPA in accordance with the FTA's Small Starts Program. In August 2007, the FTA initiated an audit which included a comprehensive review of the project scope, schedule, and costs, as well as Omnitrans' technical capacity to deliver the LPA pursuant to the criteria for approval to complete the Project Development Phase. In January 2008, FTA approved the application and granted Omnitrans authorization to enter the Project Development Phase (Environmental Clearance, Preliminary Engineering and Final Design).

Since Omnitrans does not have Engineering or Construction Departments, it must rely on consultants and contractors to help deliver the Project Development Phase. Funding for this phase of the project was approved, as shown in the Funding Source analysis section, and FTA staff has reviewed and approved the project scope, schedule, cost estimates and budget. Additionally, FTA staff required Omnitrans to prepare a Project Management Plan (PMP) for the Project Development Phase; reviewed and approved the submitted PMP.

The PMP sets guidelines for the management of the project from a grantee perspective with FTA as the oversight agency during the Project Development Phase. It lays out fundamental management philosophy and approach, organizational capacity building, cost and schedule management, change control, procurement plan, right-of-way acquisition plan, fleet management plan, and third party coordination in successfully delivering Project Development of the E Street sbX Bus Rapid Transit Corridor project. The sbX project will be managed through the Omnitrans Integrated Project Management Office (IPMO) with dedicated staff. IPMO staff extensions are being accomplished with the Project Development Team (PDT) comprising of technical representatives from partnering agencies, and with augmented staff from various Omnitrans departments. Quality Assurance and Quality Control for the Project Development phase will be accomplished utilizing technical consultant's ISO certified internal quality program, PDT reviews and comments, and IPMO audits and surveillance. Additional checks and balances will be accomplished with constructability reviews and value engineering. Technical consultants support is necessary to perform transit planning, architectural and engineering of preliminary and final engineering design, project environmental clearance, right-of-way management, public relations, and to prepare documents for FTA Project Construction Grant Approval (PCGA) to construct the LPA. Exhibit A demonstrates the sbX BRT Corridors Project Organization.

Omnitran Planning and Procurement Departments with the help of Extended Resources, the consultant providing project manager services, prepared bid documents for the procurement of technical consultant support for the Project Development phase. On February 6, 2008 Omnitrans' Board of Directors approved the release of Solicitation Number RFP-PLN08-1 to procure such consultant assistance. The RFP sought a qualified and reasonable consultant team to perform project development phase technical services necessary for the E Street Corridor sbX Project to enter into construction phase. The services to be provided include: refinement of the LPA due to changes in the southern portion of the approved LPA two years ago; preliminary engineering and environmental analysis of the refined LPA to obtain environmental clearance; real estate services necessary for the acquisition of project right-of-way prior to entering into construction; final design to enter into construction; public relations; prioritization and implementation planning of system-wide BRT corridors; support services necessary for FTA

PCGA approval; and project management and auxiliary services necessary for the consultant's scope of work.

The total duration of this contract will be five years from the first Notice to Proceed (NTP) date, for a total contract value of \$14,706,228.65, including optional tasks. The contract execution is organized into four (4) separate NTPs. The four NTPs, which are necessary to be in compliance with FTA's approval and funding guidelines, are as follows:

- NTP 1- Scope of work will include refinement of the LPA, environmental clearance, preliminary engineering, right-of-way management planning, transit planning, and auxiliary services for a price of \$9,600,398.85;
- NTP 2 – Scope of work will include final design except for the two station locations of CSUSB and Rialto Transcenter, optional pricing of \$207,360.00 for the final design of stations at the above two locations for potentially three stations, right-of-way acquisition support, documents necessary for PCGA application, and auxiliary services for a price of \$4,863,695.28.
- NTP 3 – Scope of work will include design support during construction, public relations during construction, and auxiliary services for a price of \$154,609.85.
- NTP 4 – Scope of work includes FTA required studies and other reports, and auxiliary services for a price of \$87,524.67.

The following presents major tasks and milestones under this contract:

- Refinement of the LPA – within 60 days of NTP 1
- Environmental Clearance – within 11 months of NTP 1
- Preliminary Engineering – within 11 months of NTP 1
- Real Estate Acquisition Management Plan – within 11 months of NTP 1
- Final Design, PCGA documents, and Real Estate acquisition support – within 7 months of NTP 2
- Design support during construction – within 20 months of NTP 3 or within two months of construction completion
- FTA required studies and other reports – within 6 months of NTP 4 and after one year of revenue service

The following presents major deliverables and schedules under this contract; a detailed deliverables list is included by reference and attached in Exhibit C; master schedule showing milestone deliverables will be finalized upon issuance of NTP 1:

- Refined LPA – August 2008
- System-wide BRT Corridors Plan Update with Cost estimates and Schedule of Implementation – November 2008
- Preliminary Engineering plans, cost and schedule estimates; and Environmental Clearance; RAMP – May 2009
- Final design, Construction bid technical documents, PCGA documents and FTA approval support – December 2009
- Real Estate acquisition support - May 2010
- Public relations, RFI responses, as-built drawings, and other design support during construction – March 2012
- Transit Planning, Before & After and other FTA required studies – June 2013

It is the expectation of Omnitrans that the E Street sbX BRT corridor Project Development technical services consultant under this contract will deliver scope of services as planned completing services within schedule and budget. Consultant performance will be measured and controlled by the IPMO staff using earned value performance measurement methods. Quarterly reports will be submitted to the FTA in addition to the periodic meetings with FTA's consultants performing Project Management Oversight (PMO) functions on this project. Additionally, quarterly reports will be presented to the Planning and Productivity Committee.

BID ANALYSIS

On February 6, 2008, the Board of Directors authorized Omnitrans' staff to issue the Request for Proposals for architectural and engineering services, Environmental Clearance, Preliminary Engineering and Final Design for the E Street sbX Bus Rapid Transit (BRT) Corridor Project, Project Development Phase.

Staff released the Request for Proposals, and public notices of the RFP were published in two local newspapers, a national transit magazine and posted on Omnitrans' website. One hundred and forty-five firms were solicited from an initial bidders' list created by staff from a variety of sources. Requirement of pre-bid conference attendance as mandatory for firms intending to bid in response to this RFP was set intentionally to provide a networking forum facilitating DBE participation and open competition. Thirty-three firms were represented at the pre-bid conference out of which seven firms identified themselves as interested in bidding as prime contractors; the pre-bid conference was immediately followed with a networking session for firms intending to bid as prime contractors and/or sub-consultants.

All questions and inquiries from potential bidders were addressed in written form through the amendment process and disseminated to all interested parties by Omnitrans staff. None of the firms made any requests to which Omnitrans staff was unable to provide an adequate response prior to the closing date.

Board Chair John B. Roberts, Jr. and Members of the Omnitrans Board of Directors
June 4, 2008--Page 5

The proposals were due by 3:00 p.m. on April 2, 2008. One proposal was received from Parsons Transportation Group of Ontario, CA as a prime contractor with a team of fifteen firms joined in as sub-consultants. The proposal was deemed responsive and responsible and met the RFP DBE preset goal of 9%. Out of the seven firms identified themselves as intending to bid as primes at the pre-bid conference, three responded with no-bids; STV Inc. stated that they reluctantly decided not to submit a proposal after careful review of project and documents; PB Americas cited that current commitments prevent them from assembling the proper combination of staff and resources. Another, DMJM-HARRIS Inc. indicated FTA PMOC assignments that potentially conflict with the project. Staff also contacted those remaining firms that previously expressed interest to bid as prime contractors but did not submit bids. One cited no-bid since they did not know the history of the project and felt they hadn't established a relationship with Omnitrans to assist in a successful project, but they partnered successfully with another firm as a sub-consultant. That firm then chose not to pursue the project. Another, Jacobs Inc., said they are interested in the BRT corridors and would like to discuss opportunities of collaboration. Staff is arranging for a conference call to explore this further.

As Parsons Transportation Group was deemed a qualified firm for this RFP and their technical proposal was deemed responsive and responsible, a presentation/interview session was conducted with their project team by the proposal evaluation team on April 24, 2008. Omnitrans' evaluation team comprised of representatives from the Planning Department, Procurement Department, City of San Bernardino, City of Loma Linda, SANBAG and sbX Project Manager. The proposal was evaluated with the criteria set forth in the RFP; price was excluded as an evaluation factor. 100 total points were possible.

The evaluation criteria and points given to Parsons Transportation Group are as follows:

Criteria	Max Points	Parsons
Qualifications of the Firm or Team	20	18.2
Staffing and Project Organization	25	21.6
References	5	4.6
Experience on Similar Scope of Work	10	8.2
Project Understanding and Approach	32	27.8
DBE Goal	8	8.0
Total	100	88.4

After the Parsons team and proposal were determined to be qualified and responsive, fee proposal was evaluated. Submitted fee proposal was for the amount of \$15,545,644.00, approximately \$1M over the Independent Cost Estimate (ICE) prepared and in file for the RFP scope.

Fee proposal evaluation team comprised of Directors of Planning and Procurement departments, sbX Project Manager, Contracts Manager, Contracts Specialist, and Budget Manager. Fee proposals were individually evaluated and then the team met to formulate strategies for negotiation. Evaluation revealed gaps in the scope and fees proposed, mainly with the uncertainties developed in alignment sections in Loma Linda after the adoption of the LPA and with much desired center running scenario to be analyzed for the corridor. Additionally, concerns were identified in the proposal with understanding of depth of real estate services

sought in the RFP in areas of Project Understanding & Approach, and Staffing and Project Organization. The proposed fee did not include the real estate acquisition support services sought in the RFP. An area identified to be deleted from the RFP is the requirement for a local office for the Consultant in either the City of San Bernardino or in the City of Loma Linda. Since the Parsons team is based in Ontario, which is within 50 miles of the project corridor, evaluation team felt it can be deleted. Another area identified for cost curtailment for this contract was the final design efforts for two station locations, i.e., at California State University-San Bernardino and at the Rialto Transcenter. The evaluation team felt this design effort should be priced separately as a contingency for this contract and seek remedy by design and construction to be done in respective projects. Cost and price analysis was performed on the scope and fee proposal submitted. Over all, the team set the negotiation goal to bring the contract value to be within the established ICE.

Omnitrans started negotiations with Parsons on May 7th, 2008. Negotiation sessions continued on May 8th and May 15th of 2008. Agreement between Parsons and Omnitrans was reached on May 15th on scope, contract value, and schedule for this contract. Negotiated contract value of \$14,706,228.65 with the amended scope and schedule is well within the original RFP scope, schedule and budget.

FUNDING SOURCE

The required services are funded through Federal Transit Administration (FTA) Section 5307 funds, State Transit Assistance Funds (STAF), State Transportation Improvement Program (STIP), Local Transportation Funds (LTF) and Proposition 1B funding.

FUNDING	GRANT #	FISCAL YEAR	PROJECT NAME	AMOUNT
FTA	CA-90-Y495	2007	BRT PE, Env., Final Design	\$2,160,000
STAF	07-05-MNB-B	2007	BRT PE, Env., Final Design	\$540,000
FTA	TBD	2008	BRT PE, Env., Final Design	\$3,653,408
PROP 1B	TBD	2008	BRT PE, Env., Final Design	\$3,270,981
LTF	TBD	2008	BRT PE, Env., Final Design	\$2,500,000
STIP	TBD	2008	BRT PE, Env., Final Design	\$2,581,840
			TOTAL	\$14,706,229

AGW

Verification of Funding Source and Availability of Funds.
(Verified and initialed by Director of Finance or Accounting Manager)

This procurement meets the requirements of Omnitrans' current Procurement Policy and Procedures Manuals.

CONCLUSION

For the foregoing reasons, staff recommends that the Board of Directors authorize staff to award contract PLN08-1, with a contract value of not to exceed \$14,706,228.65, to Parsons Transportation Group, Inc., of Ontario, California, for the provision of transit planning, public relations, architectural and engineering, environmental clearance, preliminary engineering and final design services for the E Street sbX Bus Rapid Transit (BRT) Corridor Project, Project Development Phase. The contract value of \$14,706,228.65 includes negotiated pricing for optional scopes of design services during construction, planning studies and reports after revenue operation, and final design of two station locations at California State University-San Bernardino and Rialto Trancenter of \$449,494.52. The Notice to Proceed will be issued on June 11, 2008 and all work will be completed within five (5) years.

DLR:RK:lw

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Single Bid Response Report

IFB-SAS13-02, VoIP Public Address System

Note to File from Christine Van Matre, Contract Administrator

SUMMARY OF SURVEY:

Potential bidders who showed an early interest in the bid were contacted. Their reasons for not submitting a bid are:

- The time frame was too short for them to put together a winning bid
 - They were too busy to take on a project at this time
 - Their preferred subcontractor was not qualified for our system
-

Email dated October 31, 2012 from Contract Administrator to the four potential bidders who did not submit a bid requesting information why they chose not to bid on this project. Responses were:

- Response dated October 31, 2012 from Debbie Neil with Vector USA; stated that they were working at capacity and did not have enough resources to take on this project at this time;
- Response dated October 31, 2012 from Mark Knop with TechStrata; stated that the time frame was too short for them to put together a winning bid.
- Response dated November 1, 2012 from Karim with Karim Power Technology; stated that their preferred subcontractor for the VoIP was not qualified for the system.
- No response was received from Joyce with MRA-Raycom.

Deemed a Valid Procurement:

1. There was no indication that the scope or bid was restrictive contributing to the lack of competition.
2. The “Bid Time” exceeded minim policy requirements of 30 days. The bid was issued on September 5, 2012 and closed on October 30, 2012.
3. Omnitrans elected to move forward with awarding the project to the single responsive and responsible bidder, Veterans Communication Services, whose price was deemed fair and reasonable.

Survey of Non-Bidders

The following companies were surveyed as to why they chose not to submit a bid for the Bus Exterior and Bus Stop Amenity Advertising. The responses were as follows:

Pasadena Advertising: the company did not have the sales force required to perform successfully on a project of this size.

Titan: Contracts Manager, Eugenia Pinheiro spoke to Mr. Donald Allman, President & Chief Executive Officer, who responded by saying that the choice not to bid was a business decision and based on the poor economy in San Bernardino County.

CBS Outdoor: Richard Ament was contacted and stated that due to the poor economy, CBS Outdoor would only bid if the due date were extended to accommodate the results of the Los Angeles Metropolitan Transportation Authority revenue contract to be awarded.

Deemed a Valid Procurement

1. There was no indication that the scope or bid was restrictive, contributing to the lack of competition;
2. Omnitrans elected to move forward with awarding the projects to the single responsive and responsive bidder, Lamar Obie Corporation, whose price was deemed fair and reasonable.

**AMENDMENT NO. 3
TO CONTRACT NO. IPMO11-5
SBX E STREET CORRIDOR**

BETWEEN
OMNITRANS
AND
GRIFFITH/COMET JOINT VENTURE

This Contract Amendment No 3, effective June 15, 2013 is entered into by and between Omnitrans (hereinafter called "Agency") and Griffith/Comet Joint Venture. (hereinafter called "Contractor").

RECITALS

WHEREAS:

- I. Agency and Contractor have entered into Contract No. IPMO11-5 on September 16, 2011; and
- II. The Agency and Contractor include all previous approved Amendments, Change Orders, Appendices, Exhibits and Attachments as part of this contract agreement; and
- III. The Agency and Contractor hereby amend this Contract to revise the General Provisions Section 33.3 Force Account Work.

NOW THEREFORE, AGENCY and CONTRACTOR hereby amend their Contract as follows:

- I. ***General Provisions Section 33.3 Force Account Work, Sub Section 33.3.2.2, Basis for Establishing Costs, Sub Section A - Delete the following and replace with:***

~~A. Labor - The cost of labor shall be the actual cost for the wages of workers performing the Force Account Work at the time Force Account Work is done, plus thirty three percent (33%) for employers' burden.~~

A. Labor - The cost of labor shall be the actual cost for the wages of workers performing the Force Account Work at the time Force Account Work is done, plus a negotiated percentage (%) that cannot exceed thirty three percent (33%) for employers burden.

General Provisions Section 33.3 Force Account Work, Sub Section 33.3.2.3, Markup, Subsection A – Delete the following and replace with:

~~A. Work by Contractor – Unless otherwise specified elsewhere in the Contract Documents, fifteen (15) percent allowance for overhead and profit shall be added to the Contractor's costs as determined under Section GP 33.3.2.2 and shall constitute the full payment for all overhead and profit on Force Account Work done by the Contractor.~~

A. Work by Contractor – Unless otherwise specified elsewhere in the Contract Documents, up to a negotiated fifteen (15) percent allowance for overhead and profit shall be added to the Contractor's costs as determined under Section GP-33.3.2.2 and shall constitute the full payment for all overhead and profit on Force Account Work done by the Contractor.

II. As hereby amended, the Contract remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 3 effective as of the day and year first therein above written.

OMNITRANS

Milo Victoria, CEO/General Manager

Dated _____

GRIFFITH/COMET JOINT VENTURE

Ryan Auckerman, Attorney-in-Fact

Dated _____

DP _____

Bid Detail**Description**

Scope of Services Omnitrans currently has one hundred forty-six (146) buses with the old blue and coral colors and logos. Two options have been developed to rebrand the existing fleet. One is to do a simple modification to substitute only the old coral paint color with new green color and replace logos on all coaches. The other is applying full vinyl wraps to match the new fleet graphics on some of our late model coaches.

Other Details**Notes****Local Programs & Policies****Special Notices****Downloadable Files**

File Title	File Name	File Size	On Server	Uploaded Date	Visible
CLIENT REFERENCES	Client references.pdf	92.2 kb	On Server	10/04/2012	Yes
DECLARATION OF NON-COLLUSION	declaration OF NON.pdf	90.0 kb	On Server	10/04/2012	Yes
Iran Contracting Act	Iran Contracting Act Certification.pdf	82.5 kb	On Server	10/04/2012	Yes
Request for Approved Equal	Request for Approved Equal.pdf	77.9 kb	On Server	10/04/2012	Yes
PO Terms and Conditions	Omnitrans terms and conditions for purchase.pdf	101.0 kb	On Server	10/04/2012	Yes
BUY AMERICA	BUY AMERICA CERTIFICATE.pdf	103.8 kb	On Server	10/04/2012	Yes
EXCLUDED PARTIES LIST	NOT ON EXCLUDED PARTIES LIST SYSTEM.pdf	73.7 kb	On Server	10/04/2012	Yes
WARRANTY CLAIM PROCEDURE	warranty claim procedure.pdf	71.9 kb	On Server	10/04/2012	Yes
ATTACHMENT A - SAMPLE CONTRACT	ATTACHMENT A SAMPLE CONTRACT IFB-MNT13-15.pdf	371.9 kb	On Server	10/04/2012	No
ATTACHMENT B - REGULATORY REQUIREMENTS	Attachment B - Regulatory Requirements.pdf	354.0 kb	On Server	10/04/2012	No
IFB-MNT13-15	Solicitation IFB-MNT13-15 - Bus Paint Wrap.pdf	846.4 kb	On Server	10/04/2012	No

Download File Fee \$0.00

Hard Copy Plans

Title/Description	Receive From	Plan Fee	Mailing Fee	Refund

REGULATORY REQUIREMENTS

- * Marks Required Subcontract Provisions that must flow down to all subcontracts as defined in the Article entitled **SUBCONTRACTORS AND SUPPLIERS** herein.

RR-01 ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

B. Compliance with §§1090 et. seq. and §§87100 et. seq. of the California Government Code

Contractor shall comply with all applicable provisions of §§1090 et. seq. and §§87100 et. seq. of the California Government Code. Without reducing or affecting its obligation to comply with any and all of said provisions, Contractor specifically covenants:

1. Contractor shall not cause or permit any member, officer, or employee of Omnitrans to have any financial interest in the Contract;
2. Contractor shall not enter into any Subcontract involving services or property with a person or business prohibited from transacting such business with Omnitrans;
3. Contractor warrants and represents that to its knowledge no Board member, officer, or employee of Omnitrans has any interest, whether contractual, non-contractual, financial or otherwise, in this Contract, or in the business or any other contract or transaction of the Contractor or any Subcontractor and that if any such interest comes to Contractor's knowledge at any time, Contractor shall make a full and complete disclosure of all such information in writing to Omnitrans.

C. Campaign Contributions

Neither Contractor nor its Agents shall give or offer to give any campaign contribution to any member of Omnitrans Board of Directors in violation of the California Government Code §§84300 et seq., or of the Administrative Code. Contractor shall submit a Certification of Campaign Contributions with all COs of two hundred thousand dollars (\$200,000) or more.

RR-02

DISCRIMINATION *

A. Applicability

This Article applies to all contracts.

- B.** In connection with the performance of Work provided for under this Contract, Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex, sexual orientation, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

RR-03

WHISTLEBLOWER REQUIREMENTS *

A. Applicability

This Article applies to all contracts.

- B.** Contractor shall not adopt any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee believes the information discloses violation or noncompliance with a state or Federal regulation; nor shall Contractor retaliate against an employee for taking such actions as set forth in the t. scq.

RR-04

PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

- B.** Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of Omnitrans business, including all information and documents submitted by Contractor ("Records"), shall become the exclusive property of Omnitrans and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). Omnitrans use and disclosure of its records are governed by this Act. Omnitrans will use its best efforts to inform the Contractor of any request for any financial records or documents marked "Trade Secret", "Confidential" or "Proprietary" provided by Contractor to Omnitrans. Omnitrans will not advise as to the nature or content of

documents entitled to protection from disclosure under the California Public Records Act.

- C. In the event of litigation concerning the disclosure of any Records, Omnitrans sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold Omnitrans harmless from all costs and expenses including attorney's fees in connection with any such action.

RR-05 ACCESS TO RECORDS *

A. Applicability

This Article applies to all federally funded contracts.

- B. Contractor agrees to provide Omnitrans, 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 the FTA's authorized representatives, including any FTA Project Management Oversight 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.
- C. If this Contract is for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) and was entered in to through other than competitive bidding, the Contractor shall make records related to this Contract available to Omnitrans, 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.
- D. Contractor shall permit any of the foregoing parties to reproduce without any cost by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- E. Contractor shall 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 Omnitrans, 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.

RR-06 FEDERAL FUNDING, INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, AND FEDERAL CHANGES*

A. Applicability

This Article applies to all federally funded contracts.

- B. This Contract includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008 and revised April 14, 2009 (including any changes), and 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 Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Omnitrans requests which would cause Omnitrans to be in violation of the FTA terms and conditions.

This Contract is subject to a financial assistance agreement between Omnitrans and the Federal Transit Administration of the US Department of Transportation and all laws, regulations, guidelines, and provisions of the financial assistance agreement apply to this Contract and are incorporated by reference as if fully set forth herein.

- C. Contractor shall at all times comply with all applicable federal laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between Omnitrans and FTA, as they may be amended or promulgated from time to time during the term of this Contract collectively "Federal Requirements". These Federal Requirements may change and the changed Federal Requirements will apply to this Contract as required unless the Federal Government determines otherwise. Contractor's failure to so comply with the Federal Requirements shall constitute a material breach of this Contract.

RR-07

ENERGY CONSERVATION REQUIREMENTS

A. Applicability

This Article applies to all federally funded contracts.

- B.** Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 USC §6321 et seq.

RR-08

CIVIL RIGHTS REQUIREMENTS *

A. Applicability

This Article applies to all federally funded contracts.

- B.** 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, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

C. Equal Employment Opportunity

- (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, Contractor shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. , (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Contract. Contractor shall 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, Contractor shall 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, Contractor shall refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor shall 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, Contractor shall 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, Contractor shall comply with any implementing requirements FTA may issue.
- (d) Contractor shall include these requirements in each subcontract, modified only if necessary to identify parties, as required by Federal regulations.

RR-09

NO GOVERNMENT OBLIGATION TO THIRD PARTIES *

A. Applicability

This Article applies to all federally funded contracts.

- B. Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to Omnitrans, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from this Contract.

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Contractor shall include this Article in each Subcontract and shall not modify the Article, except to identify the Subcontractor who will be subject to its provisions.

RR-10 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS *

A. Applicability

This Article applies to all federally funded contracts.

- B.** 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, shall apply to actions pertaining to this Contract. Upon execution of this Contract, 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 this Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, 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 Contractor to the extent the Federal Government deems appropriate.
- C.** Contractor also acknowledges that this Contract is 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 and if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.
- D.** Contractor shall include this Article in each subcontract financed in whole or in part with Federal assistance provided by FTA. Contractor shall not modify the Article, except to identify the Subcontractor who will be subject to the provisions.

RR-11 SUSPENSION AND DEBARMENT*

A. Applicability

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This article applies to federally funded 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.

- B. This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor shall 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.

Contractor shall comply with 49 CFR 29, Subpart C and shall include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

- C. By entering into this Contract, Contractor certifies that it shall comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Contract.

This certification is a material representation of fact relied upon by Omnitrans. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to Omnitrans, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

RR-12 RECYCLED PRODUCTS

A. Applicability

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

- B. To the extent practicable and economically feasible, a competitive preference shall be given for products and services that conserve natural resources and protect the environment and are energy efficient.
- C. 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.

RR-13

CLEAN WATER AND CLEAN AIR REQUIREMENTS*

A. Applicability

This Article applies to all federally funded contracts over \$100,000.

B. CLEAN WATER REQUIREMENTS

Contractor shall 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., and all applicable clean water standards of the State of California and any state or local agency having jurisdiction. Contractor shall report each violation to Omnitrans. Omnitrans will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office, and all other agencies having jurisdiction.

C. CLEAN AIR

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and all applicable Clean Air Standards of the State of California or any state or local agency having jurisdiction. Contractor shall report each violation to Omnitrans. Omnitrans will, in turn, report each violation as required to FTA, the appropriate EPA Regional Office and all other agencies having jurisdiction.

- C. Contractor shall include this Article in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

RR-14

COMPLIANCE WITH FEDERAL LOBBYING POLICY *

A. Applicability

The following Article applies to federally funded contracts over \$100,000.

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- B. The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, requires that 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," attached hereto as the certification entitled, "Certification of Compliance with Federal Lobbying Requirements." As set forth in the certifications, each tier of subcontractors shall certify 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 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 shall be forwarded from tier to tier up to Omnitrans.

RR-15 BUY AMERICA *

A. Applicability

The following Article applies to federally funded rolling stock purchase and construction contracts over \$100,000 and to contracts over \$100,000 for materials & supplies for steel, iron, or manufactured products.

- B. Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR 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.

Omnitrans may investigate Contractor's, any Subcontractor's, and any Supplier's compliance with this Article. If an investigation is initiated, Contractor, Subcontractor, or Supplier shall document its compliance, in accordance with 49 CFR 661.15, and cooperate with the investigation. Contractor shall incorporate the Buy

America conditions set forth in this Article in every subcontract or purchase order and shall enforce such conditions.

- C. FTA requires a Buy America certification to be submitted with the proposal, or the proposal shall be considered non-responsive.

RR-16 CARGO PREFERENCE*

A. Applicability

The following Article applies to federally funded contracts involving equipment, materials, or commodities which may be transported by ocean vessels

B. USE OF UNITED STATES FLAG VESSELS

Contractor shall 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 this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

Contractor shall 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 Omnitrans (through Contractor in the case of a subcontractor's bill-of-lading.)

Contractor shall 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.

RR-17 FLY AMERICA

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A. Applicability

This Article applies to federally funded contracts if the contract or subcontracts may involve the international transportation of goods, equipment, or personnel by air.

- B. 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 sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. 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. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

RR-18 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT *

A. Applicability

This Article applies to federally funded construction contracts over \$2,000 (including ferry vessels), rolling stock purchases over \$2,500 and to operations/management contracts over \$2,500 (except transportation services)

- B. Pursuant to the Labor Standards Provisions Applicable to Non-construction Contracts subject to the Federal Contract Work Hours and Safety Standards Act, 40 U.S.C.A. § 327 through 332 as implemented by U.S. Department of Labor regulations, 29 CFR 5.5 (b) and (c) Contractor and Subcontractor's contracting for any part of the Contract work shall comply with the following:

1. **Overtime requirements** – Neither Contractor nor any Subcontractor contracting for any part of the Contract work that requires or involves 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 Article set forth in paragraph (1) of this Article Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, 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 Article, in the sum of ten dollars (\$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 Article.
3. **Withholding for unpaid wages and liquidated damages** – Omnitrans 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 monies payable on account of work performed by Contractor or Subcontractor under the Contract or any other Federal contract with Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this Article.
4. **Subcontracts** – Contractor or Subcontractor shall insert this Article in any Subcontracts and also an Article requiring the Subcontractors to include this Article in any lower tier Subcontracts. Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with this Article.
5. **Payrolls and basic records** – The records to be maintained hereinabove shall be made available by Contractor or Subcontractor for inspection, copying, or transcription by Omnitrans and U.S. Dept. of Labor. Contractor and Subcontractor shall maintain payrolls and basic records

during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid.

RR-19 DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

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 11%.
- b. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by 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 Omnitrans deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. Bidders 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'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 must present the information required above as a matter of responsiveness with initial proposals prior to contract award] (see 49 CFR 26.53(3)).

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

d. Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 7 days after the contractor's receipt of payment for that work from the Omnitrans. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to his contract is satisfactorily completed.

e. Contractor must promptly notify Omnitrans 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. 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 Omnitrans.

RR-20 ADA ACCESS

A. Applicability

This Article applies to federally funded Architect & Engineer, Operations/Management, Rolling Stock Purchase, and Construction contracts

B. Access Requirements for Persons with Disabilities

Contractor shall comply with:

1. The requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy;
2. All applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps;
3. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with

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- disabilities, including any subsequent amendments to that Act;
4. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act; and
 5. All applicable requirements of the following regulations and any subsequent amendments thereto:
 - (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
 - (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
 - (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
 - (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
 - (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
 - (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
 - (7) 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;
 - (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services

and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
- (11) Any implementing requirements FTA may issue.

RR-21 **ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM ***

A. Applicability

This Article applies to federally funded contracts for transit operations.

B. FTA Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations Regulations

Contractor and its Subcontractors shall comply with the FTA anti-drug and alcohol misuse regulations (49 CFR Part 655) and the U.S. Department of Transportation (DOT) Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40) to the full extent that they are, by their terms, applicable to Contractor and its Subcontractors. The regulations apply to all "contractors" that have "covered employees" that perform "safety sensitive functions" as those terms are defined in the regulations.

C. Certificate of Compliance

The CERTIFICATE OF COMPLIANCE WITH 49 CFR PARTS 655, PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT, submitted by Contractor prior to award, is incorporated as part of the Contract Documents.

D. Drug and Alcohol Testing Program

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In the event that any part of the Work under this Contract falls within the scope of 49 CFR Part 655, Contractor, and its Subcontractors (as applicable), shall 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 California, or Omnitrans, 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. Contractor shall annually certify its compliance with Parts 653 and 654. 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.

E. Alcohol and Drug Free Workplace Program

In addition to the above, for Work performed on Omnitrans property, Contractor shall provide an Alcohol and Drug-free Workplace Program in accordance with FTA requirements found at <http://transit-safety.fta.dot.gov/DrugAndAlcohol/default.asp>

RR-22

TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS *

A. Applicability

Subject to the limitations in Sections B, C, and D, this Article applies if this Contract involves transit operations to be performed by employees of a Contractor recognized by FTA to be a transit operator, and if FTA has determined that it is financed in whole or in part with Federal assistance.

B. General Transit Employee Protective Requirements

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance (other than Federal assistance authorized by 49 U.S.C. § 5310(a)(2) or 49 U.S.C. § 5311), and if the U.S. Secretary of Transportation has determined that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for Omnitrans under this Contract, then Contractor shall perform the transit operations work under the Contract in compliance with

terms and conditions, (a) determined by the U.S. Secretary of Labor to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor ("U. S. DOL") guidelines at 29 C.F.R. Part 215, and any amendments thereto, and (b) stated in a U. S. DOL letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Omnitrans, and which is incorporated in the Form of Contract as a Contract Document entitled "U. S. DOL Certification".

C. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a) (2) for Elderly Individuals and Individuals with Disabilities

If FTA has determined that this 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 Omnitrans under the Contract, Contractor shall perform the Work in compliance with the terms and conditions determined, (a) 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, and (b) stated in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the applicable Grant Agreement or Cooperative Agreement with Omnitrans, and which is incorporated in the Form of Contract as a Contract Document entitled "U. S. DOL Certification".

D. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas

If FTA has determined that this Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor shall 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.

E. Indemnity

Contractor shall defend, indemnify and hold harmless Omnitrans, and its Board Members, employees and agents from and against all liability, claims, demands actions, costs, judgments, penalties,

damages, losses and expenses arising out of or in connection with Contractor's failure to comply with or failure to carry out its responsibilities under all applicable provisions of Sections B, C and D of this Article.

RR-23 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 ten (10) percent of the bid price. The "bid guarantees" shall consist of a firm commitment and may be in any of the following forms: (a) cash; (b) cashier's check payment to Omnitrans; (c) a certified check payable to the city; or (d) a bidder's bond executed by an admitted surety insurer. Such as a bid bond, certifies 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 of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- 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.

RR-24 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(j)(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 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** - Omnitrans 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, Omnitrans 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 Omnitrans 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) 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) 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) 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

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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 that 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.

RR-25 PRIVACY ACT - 5 U.S.C. 552

<u>Applicability</u>	<u>to</u>	<u>Contracts</u>
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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.

<u>Flow</u>	<u>Down</u>
The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.	

<u>Model</u>	<u>Clause/Language</u>
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.

RR- 26 TERMINATION 49 U.S.C. Part 18 FTA Circular 4220.1F

<u>Applicability</u>	<u>to</u>	<u>Contracts</u>
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.		

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

a. Termination for Convenience (General Provision) Omnitrans 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 Omnitrans to be paid the Contractor. If the Contractor has any property in its possession belonging to the Omnitrans, the Contractor will account for the same, and dispose of it in the manner the Omnitrans directs.

b. Opportunity to Cure (General Provision) Omnitrans 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 Omnitrans' 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 Omnitrans setting forth the nature of said breach or default, Omnitrans 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 Omnitrans from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

d. 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, Omnitrans may terminate this contract for default. Omnitrans shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Omnitrans may take over the work and compete 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 Omnitrans 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 Omnitrans 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 Omnitrans in writing of the causes of delay. If in the judgment of Omnitrans, the delay is excusable, the time for completing the work shall be extended. The judgment of Omnitrans 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 Omnitrans.

**RR - 27 SEISMIC SAFETY REQUIREMENTS 42 U.S.C. 7701 et seq. 49 CFR
Part 41**

<u>Applicability</u>	<u>to</u>	<u>Contracts</u>
The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.		

<u>Flow</u>	<u>Down</u>
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.	

<u>Model</u>	<u>Clauses/Language</u>
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.

RR-28 BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18 FTA Circular 4220.1E

<u>Applicability</u>	<u>to</u>	<u>Contracts</u>
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.		

<u>Flow</u>	<u>Down</u>
The Breaches and Dispute Resolutions requirements flow down to all tiers.	

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Omnitrans Construction Manager. 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 Omnitrans Construction Manager. 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 Omnitrans Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Omnitrans 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 Omnitrans 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 Omnitrans, 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.

END OF REGULATORY REQUIREMENTS

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