



**CITY OF MERRILL
TRANSIT COMMISSION**

AGENDA • MONDAY, JANUARY 19, 2026

Regular Meeting

City Hall Council Chambers

4:00 PM

To attend remotely call 319-449-0332 PIN: 555 629 888 #

I. Call to Order

II. Public Comment

1. *

III. Approval of previous meeting minutes

1. Minutes

IV. Administrator's Report

1. Report

V. General Agenda Items for Consideration

1. Veterans Coffee and Conversation
2. Lincoln County Transportation
3. Revised Title VI
4. Revised Procurement Policy

VI. Agenda Items for Next Meeting

1. *
2. *
3. *

VII. Date and Time of Next Meeting

February 16, 2026 Merrill City Hall Council Chambers at 4:00pm

VIII. Adjournment

The Merrill City Hall is accessible to the physically disadvantaged. If special accommodations are needed, please contact the Merrill City Hall at (715) 536-5594.

**CITY OF MERRILL
TRANSIT COMMISSION
MONDAY, DECEMBER 15, 2025 MINUTES
REGULAR MEETING CITY HALL COUNCIL CHAMBERS 4:00 PM**

I. Call to Order Roll Call:

Present: Kunkel, Ziech, Ziech, Zastrow
Present Not Voting: Transit Administrator Brad Brummond
Excused: Brady Loos
Absent: Jill Weber

II. Public Comment

1. * - Steve Sabatke spoke on behalf of Veterans Coffee and Conversation. Will set up an account for Veterans to use for transportation to and from meetings.

III. Approval of previous meeting minutes

1. **Minutes** - (Kunkel/ Ziech) motion/second to approve. The motion Passed.

IV. Administrator's Report

1. **Report** - Discussion on November Ridership, staff level,radio call on December 9th, CSR complete, PTAP application complete, and recap of Tour of Lights.

V. General Agenda Items for Consideration

1. **Vets Coffee Club** - Discussion - Coffee and Conversation. Account will be set up and managed by MGR for Veterans rides. Limited availability of mobility device spaces on the bus. Rides will happen along with regular routing.
2. **Review of Extended Service Area** - Discussion of impact on service levels. At this time there is no impact.

VI. Agenda Items for Next Meeting

1. * - Update on Coffee and Conversation
2. * - review of minutes from Lincoln County Transportation meeting
3. * -

VII. Date and Time of Next Meeting January 19, 2026 4:00pm in Merrill City Hall Council Chambers

VIII. Adjournment (Kunkel/ Ziech) motion/second to adjourn. The motion Passed.

Transit Administrator Report

January 2026

Ridership: 5008 rides for December

Employee Status: - Staff at full level

Working on 5 year Compliance site review for DOT – working on findings

2025 4th quarter report – numbers are all looking good

FOURTH QUARTER REPORT

PASSENGERS											REVENUE				
YEAR	MONTH			QUARTER TOTAL	%	YEAR	MONTH			QUARTER TOTAL	%				
	OCT	NOV	DEC				OCT	NOV	DEC						
2016	5538	5009	5315	15,862		2016	\$ 6,367.85	\$ 6,120.05	\$ 4,946.00	\$17,433.90					
2017	5908	5129	4845	15882	100%	2017	\$7,624.95	\$6,587.75	\$6,162.95	\$ 20,375.85	117%				
2018	5623	4857	4025	14505	91%	2018	\$6,544.20	\$6,260.35	\$4,321.50	\$17,126.05	84%				
2019	5543	4249	4528	14320	99%	2019	\$7,078.35	\$4,993.00	\$6,228.90	\$18,300.25	107%				
2020	2620	1921	2415	6956	49%	2020	\$3,428.00	\$2,169.60	\$5,066.35	\$10,663.95	58%				
2021	3833	3761	3280	10874	156%	2021	\$8,777.75	\$8,958.00	\$5,170.00	\$22,905.75	215%				
2022	4798	4715	3673	13186	121%	2022	\$9,967.90	\$9,278.40	\$7,745.40	\$26,991.70	118%				
2023	5198	5001	4244	14443	110%	2023	\$8,612.40	\$9,348.90	\$8,643.40	\$26,604.70	99%				
2024	5290	4399	4373	14062	97%	2024	\$9,391.50	\$5,142.50	\$8,411.95	\$22,945.95	86%				
2025	5247	4555	5008	14810	105%	2025	\$8,942.30	\$8,890.60	\$9,773.10	\$27,606.00	120%				

REVENUE PER RIDE					MILEAGE						
YEAR	QUARTER AVERAGE			%	YEAR	MONTH			QUARTER TOTAL	%	
	OCT	NOV	DEC			OCT	NOV	DEC			
2016	\$1.15	\$1.22	\$0.93	\$1.10	2016	5556	5396	5689	16,641		
2017	\$1.29	\$1.28	\$1.27	\$1.28	116%	2017	5319	4865	4615	14,799	89%
2018	\$1.16	\$1.29	\$1.07	\$1.17	91%	2018	5074	4305	3633	13012	88%
2019	\$1.28	\$1.18	\$1.38	\$1.28	109%	2019	5387	4216	4374	13977	107%
2020	\$1.30	\$1.13	\$2.10	\$1.51	118%	2020	3203	2661	3267	9131	65%
2021	\$2.29	\$2.38	\$1.58	\$2.08	138%	2021	3897	3670	3740	11307	124%
2022	\$2.07	\$1.96	\$2.10	\$2.04	98%	2022	4187	4143	3679	12009	106%
2023	\$1.65	\$1.87	\$2.04	\$1.85	91%	2023	4171	3917	3572	11660	97%
2024	\$1.78	\$1.17	\$1.92	\$1.62	88%	2024	3759	3603	3718	11080	95%
2025	\$1.70	\$1.95	\$1.95	\$1.87	115%	2025	4347	3598	3985	11930	108%

MILES PER PASSENGER					FUEL						
YEAR	QUARTER AVERAGE			%	YEAR	QUARTER AVERAGE			%		
	OCT	NOV	DEC			OCT	NOV	DEC			
2016	1	1.08	1.07	1.05	2016						
2017	0.9	0.95	0.95	0.93	89%	2017					
2018	0.9	0.89	0.9	0.9	97%	2018					
2019	0.97	0.99	0.97	0.98	109%	2019					
2020	1.22	1.4	1.35	1.33	136%	2020					
2021	1.02	0.98	1.14	1.05	79%	2021					
2022	0.87	0.88	1	0.92	88%	2022					
2023	0.8	0.78	0.84	0.81	88%	2023	777.7	708.9	655.9	714.17	
2024	0.71	0.82	0.85	0.79	98%	2024				0.00	0
2025	0.83	0.79	0.80	0.80	101%	2025	818.74	666.38	650	711.71	#DIV/0!

YEAR	57	119	FREE	STUDENT	ADA	ELDERLY	ADULT	TOTAL
2015	190	0	275	9,279	5,088	1,335	1,763	17,740
2016	97	0	186	7907	4826	1561	1,382	15,862
2017	57	0	150	7944	4683	1595	1510	15,882
2018	38	0	279	6,585	4414	1169	2020	14,505
2019	93	0	217	6,784	4060	1187	1979	14,320
2020	92	0	155	2,959	2249	723	798	6,976
2021	0	0	73	1,663	729	372	443	3,280
2022	0	0	194	7,065	3572	1041	1314	13,186
2023	0	0	42	6,946	4932	1271	1252	14,443
2024	0	0	17	5,321	6224	1360	1140	14,062
2025	0	0	270	7,448	5094	1382	689	14,883

City of Merrill

Title VI/ADA Nondiscrimination Plan

Revised on: January 19, 2026

Adopted by: Merrill Transit System Commission

Original Plan

Adopted on: March 21, 2016

This plan is hereby adopted and signed by:

City of Merrill

Executive Name/Title: Sara Zastrow / Transit Chairperson

Executive Signature:

As a recipient of USDOT Federal Transit Administration (FTA) funding, per [FTA Circular 4702.1B](#) the **City of Merrill** is required to prepare a Title VI/ADA Nondiscrimination Plan with the following elements:

- Evidence of Policy Approval
- Policy Statement, Log of Policy Updates, Contact Information/Program Administration
- Notice of Nondiscrimination (**Appendix 1**)
- Complaint Procedure (**Appendix 2**)
- Complaint Log (**Appendix 3**)
- Complaint Form (**Appendix 4**)
- Public Involvement Plan (**Appendix 5**)
- Limited English Proficiency (LEP) Plan (**Appendix 6**)
- Language Assistance Tools (**Appendix 7**)
- Demographic Representation Information (**Appendix 8**)

Policy Statement

The **City of Merrill** is committed to ensuring that no person is excluded from the participation in, denied the benefits of, or otherwise subjected to discrimination on the basis of race, color, national origin, sex, age, or disability in any and all programs, activities or services administered by the **City of Merrill** in accordance with Title VI of the Civil Rights Act of 1964¹ and related nondiscrimination authorities.

The **City of Merrill** receives federal financial assistance to provide transportation service in the City of Merrill. Information on the transportation services is available on the Merrill-Go-Round transit system website at <https://ci.merrill.wi.us/transit>

Policy Updates – Activity Log

The **City of Merrill** will review its policy on an annual basis to determine if modifications are necessary. The table below outlines the Title VI/ADA Plan reviews/revisions made by the **City of Merrill**.

Date	Activity (Review/Update/Addendum/ Adoption/Distribution)	Person Responsible	Notes
December 31, 2025	Updated Title VI/ADA Plan per WisDOT requirement. Revisions included updated Complaint Procedure, updated Language Assistance Plan and Demographic Representation Information with current US Census data	Brad Brummond	
June 21, 2021	Update Title VI Plan – updated Complaint Form, US Census Data	Brad Brummond	
March 21, 2016	Develop Title VI/ADA Plan	Rich Grenfell	

¹ **Title VI of the Civil Rights Act of 1964** states “No person in the United States shall, on the grounds of race, color or national origin, be excluded from, participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” – [Title 42 USC Section 2000d](#)

Contact Information/Program Administration

Chief Executive

The **City of Merrill's** Chief Executive will ensure compliance with [Title VI of the Civil Rights Act of 1964 \(42 U.S.C. 2000d\)](#) and the U.S. Department of Transportation implementing regulations.

Name:	Brad Brummond
Email:	brad.brummond@ci.merrill.wi.us
Phone:	715-536-7112

Civil Rights Coordinator

The **City of Merrill's** Civil Rights Coordinator ensures Title VI/ADA Nondiscrimination in accordance with the **City of Merrill's** federally funded transportation activities. The Civil Rights Coordinator has other duties and responsibilities in addition to Title VI/ADA Nondiscrimination. This position has a direct reporting relationship and access to the **City of Merrill's** Chief Executive.

Name:	Brad Brummond
	brad.brummond@ci.merrill.wi.us
	715-536-7112

The Civil Rights Coordinator is responsible for initiating, monitoring, and ensuring compliance of the **City of Merrill's** nondiscrimination requirements, including the following activities:

- ✓ Program Administration
 - Ensure compliance with federal Title VI/ADA Nondiscrimination requirements.
 - Develop and implement the **City of Merrill's** Title VI/ADA Nondiscrimination Plan.
 - Update and maintain Title VI/ADA Nondiscrimination policies and procedures.
- ✓ Complaints
 - Review, track, investigate and close Title VI/ADA Nondiscrimination complaints.
- ✓ Employee Training
 - Educate staff on Title VI/ADA Nondiscrimination requirements and procedures.
- ✓ Reporting
 - Prepare and submit Title VI/ADA Nondiscrimination reports per state and federal regulations.
- ✓ Public Dissemination
 - Notify the public of the **City of Merrill's** Nondiscrimination requirements via the **City of Merrill's** public area, on its website, in vehicles, etc.
- ✓ Oversight
 - Ensure contractors and lessees adhere to Title VI/ADA Nondiscrimination requirements.

Notice of Nondiscrimination

[FTA Title VI Circular 4702.1B](#) requires the **City of Merrill** as a recipient of federal financial assistance to notify the public of its obligations under U.S. DOT Title VI regulations and the protections against discrimination afforded to them by Title VI.

Title VI and ADA regulations require **City of Merrill** to inform the public of their rights under Title VI and ADA by posting a *Notice of Nondiscrimination*. The *Notice of Nondiscrimination* should be posted in the following locations: agency website, public areas of the agency office, and as applicable, inside vehicles, rider guides/schedules, and transit shelters/facilities.

The public notice must include a statement of nondiscrimination, information on how to request additional information about the agency's Title VI and ADA obligations, including information on how to file a complaint, the location of the complaint form, etc., and information on how to request Title VI and ADA information in another language.

The **City of Merrill's** *Notice of Nondiscrimination* is provided in the following locations:

- ✓ Agency website - <https://ci.merrill.wi.us/transit>
- ✓ Merrill City Hall 1004 E 1st St Merrill, WI 54452
- ✓ Inside vehicles

On English versions of the *Notice of Nondiscrimination*, a sentence is included in Spanish and Hmong to contact the **City of Merrill** at 715-536-7112 if additional information is needed in another language.

To view a copy of the **City of Merrill's** *Notice of Nondiscrimination*, please see **Appendix 1**.

Complaint Procedure, Complaint Log, and Complaint Form

The **City of Merrill**, as a recipient of federal financial assistance must develop a procedure for investigating, tracking, and resolving Title VI/ADA Nondiscrimination complaints and make the procedures available to the public upon request.

Any person, group or firm that believes they've been discriminated against on the basis of race, color, national origin, sex, age, or disability by the **City of Merrill** may file a civil rights complaint.

Scope of Civil Rights Complaints

The scope of civil rights complaints covers all internal and external **City of Merrill** activities. Complaints can originate as a result of project and program impacts on individuals or groups. Examples include social and economic impacts such as access to programs, activities and services, failure to maintain facilities and vehicles, traffic, noise, air quality, and accidents.

The **City of Merrill's** complaint procedure shown in **Appendix 2** is available in the following locations:

- ✓ Agency website, either as a reference in the *Notice of Nondiscrimination* or in its entirety
- ✓ Agency Office: Merrill City Hall 1004 E 1st St Merrill, WI 54452

Civil Rights Investigations

Recipients of federal financial assistance are required to maintain a list of any complaints alleging discrimination. The list shall include the date the civil rights complaint, investigation, or lawsuit was filed, a summary of the allegation(s), the status of the complaint, investigation, or lawsuit, actions taken by the recipient in response, and final actions related to the complaint, investigation, or lawsuit.

Appendix 3 is the **City of Merrill's** *Complaint Log* procedure and tracking mechanism to investigate, track and resolve complaints.

Since the last update of this Title VI/ADA Nondiscrimination Plan, there has been no transportation related civil rights investigations, complaints, or lawsuits filed with the **City of Merrill**.

Complaint Form

City of Merrill's *Complaint Form* is shown in **Appendix 4**.

Public Involvement Plan

Recipients of federal financial assistance are required to develop a public involvement plan that includes outreach strategies and participation techniques to engage the public including minority, low-income, and limited English proficient (LEP) populations, as well as a summary of outreach efforts made since the last Title VI/ADA Nondiscrimination Plan.

While traditional means of seeking public involvement may not reach all individuals, or might not allow for meaningful avenues of input, the intent of this effort is to take reasonable actions to provide opportunities for historically under-served populations to participate in transportation decision making efforts.

City of Merrill's *Public Involvement Plan* is shown in **Appendix 5**.

Limited English Proficiency (LEP) Plan

Recipients of federal financial assistance are required to develop and implement a plan to ensure accessibility to its programs and services for persons who are not proficient in the English Language. [FTA Circular 4702.1B – Title VI Requirements and Guidance for FTA Recipients](#) provides guidance and instructions for plan development.

City of Merrill's *Limited English Proficiency (LEP) Plan* is shown in **Appendix 6**.

The LEP Plan outlines the policies and procedures the **City of Merrill** uses to address the needs of LEP persons wanting to participate in **City of Merrill** transportation services.

Demographic Representation Information

The **City of Merrill** understands that diverse representation on boards, councils, and committees results in sound policy reflective of the needs of the entire population. [FTA Title VI Circular 4702.1B](#) requires recipients which have transportation-related, non-elected boards, advisory council or committees, or similar bodies, to report membership of these committees broken down by race and include a description of efforts made to encourage participation.

City of Merrill's *Demographic Representation Information* is shown in **Appendix 7**.

Notice of Nondiscrimination to the Public

City of Merrill's *Notice of Nondiscrimination* is posted in the following areas:

- ✓ Public area of the agency office
- ✓ Inside vehicles
- ✓ Rider Guides/Schedules

Notice of Nondiscrimination

City of Merrill

- ✓ The **City of Merrill** is committed to ensuring that no person is excluded from the participation in, denied the benefits of, or otherwise subjected to discrimination on the basis of race, color, national origin, sex, age, or disability in any and all programs, activities, or services administered by the **City of Merrill** in accordance with Title VI of the Civil Rights Act of 1964 and related nondiscrimination authorities.
- ✓ Any person who believes they've been aggrieved by any unlawful discriminatory practice may file a complaint with the **City of Merrill**.
- ✓ For information on the **City of Merrill's** civil rights program, procedures to file a complaint, or request a reasonable modification contact 715-536-7112 (for hearing impaired, please use [Wisconsin Relay 711](tel:1-800-947-6644) (1-800-947-6644), email brad.brummond@ci.merrill.wi.us, or visit our administrative office at City Hall at 1004 E. 1st Street, Merrill, WI 54452.
- ✓ Information is also available online at: <https://ci.merrill.wi.us/transit>
- ✓ A complaint may also be filed directly with the following:
 - Wisconsin Department of Transportation (WisDOT), Senior Title VI and ADA Coordinator, Phone: (608) 266-8129, TTY (800) 947-3529, Fax: (608)267-3641, Email: taqwanya.smith@dot.wi.gov, 4822 Madison Yards Way, 5th Floor South, Madison, WI 53705. For more information, visit <https://wisconsindot.gov/Pages/doing-bus/civil-rights/titlevi-ada/filingcomplaint.aspx>
 - U.S. Department of Transportation, Federal Transit Administration (FTA), Office of Civil Rights, 1200 New Jersey Avenue SE, Washington, DC 20590, Phone: 1-888-446-4511 or 711(Relay), email: FTACivilRightsCommunications@dot.gov
- ✓ If information is needed in another language, contact 715-536-7112.
Si se necesita informacion en otro idioma de contacto, 715-536-7112.
Yog muaj lus qhia ntxiv rau lwm hom lus, hu rau 715-536-7112.

Website Statement:

The **City of Merrill** operates its programs and services without regard to race, color, national origin, sex, age, or disability in accordance with Title VI of the Civil Rights Act, Americans with Disabilities Act (ADA), and related nondiscrimination authorities. For more information on the **City of Merrill's** civil rights program, ADA obligations, and the procedures to file a complaint or make a reasonable modification, contact brad.brummond@ci.merrill.wi.us, 715-536-7112. For hearing impaired, please use Wisconsin Relay 711 (1-800-947-6644) or <https://wisconsinrelay.com>.

Complaint Procedure

The **City of Merrill's** Complaint Procedure is available in the following locations:

- ✓ Agency website, either as a reference in the *Notice of Nondiscrimination* or in its entirety
 - ✓ Agency office: Merrill City Hall 1004 E 1st St Merrill, WI 54452
-

Any person who believes they've been discriminated against on the basis of race, color, national origin, sex, age, or disability by the **City of Merrill** may file a complaint by completing and submitting the **City of Merrill's** Complaint Form.

The Complaint Form may also be used to submit general complaints to the **City of Merrill**.

The **City of Merrill** investigates complaints received no more than **180** calendar days after the alleged incident. The **City of Merrill** will process complaints that are complete.

Once the complaint is received, the **City of Merrill** will review the complaint and work to resolve the complaint informally, if possible.

If the complaint warrants a formal civil rights complaint process, the **City of Merrill** will follow the steps listed in this complaint procedure. The **City of Merrill** may also use this formal procedure to address general complaints. If the **City of Merrill** determines it has jurisdiction the complainant will receive an acknowledgement letter stating the complaint will be investigated by the **City of Merrill** as a civil rights complaint.

The **City of Merrill** has **(30) thirty** business days to investigate the civil rights complaint. If more information is needed to resolve the case, the **City of Merrill** may contact the complainant.

The complainant has **(5) five** business days from the date of the letter to send requested information to the investigator assigned to the case.

If the investigator is not contacted by the complainant or does not receive the additional information within **(5) five** business days, the **City of Merrill** can administratively close the case. A case can be administratively closed also if the complainant no longer wishes to pursue their case.

After the investigator reviews the complaint, one of two (2) letters will be issued to the complainant: a closure letter or a letter of finding (LOF).

- ✓ A closure letter summarizes the allegations and states that there was not a Title VI or ADA violation and that the case will be closed.
- ✓ A letter of finding (LOF) summarizes the allegations and the interviews regarding the alleged incident, and explains whether any disciplinary action, additional training of the staff member, or other action will occur.

If the complainant wishes to appeal the decision, the complainant has **(5) five** business days after the date of the letter or the LOF to do so.

A person may also file a complaint directly with the Federal Transit Administration, at FTA Office of Civil Rights, 1200 New Jersey Avenue SE, Washington, DC 20590.

If information is needed in another language, then contact 715-536-7112.

Si se necesita informacion en otro idioma de contacto, 715-536-7112.

Yog muaj lus qhia ntxiv rau lwm hom lus, hu rau 715-536-7112.

Complaint Log
List of Complaints, Investigations and Lawsuits²

The **City of Merrill** maintains a log to track and resolve transportation related civil rights complaints, investigations, and lawsuits.

Check One:

X Since the last update of this Title VI/ADA Nondiscrimination Plan, there has been no transportation related civil rights investigations, complaints, or lawsuits filed with the **City of Merrill**.

- The table below has no entries because the **City of Merrill** does not have transportation related civil rights complaints, investigations, or lawsuits.

There has been transportation related civil rights investigations, complaints and/or lawsuits filed against us. *See list below. Attach additional information as needed.*

Note: The performance measure for tracking when an investigation begins and when its administratively closed is documented in the **Complaint Log** table below. **City of Merrill** will strive to complete the investigation within the timeframe specified in its **Complaint Procedure**.

Type Complaint Investigation Lawsuit	Date Complaint Received (Month, Day, Year)	Complainant's Contact Information Name/Phone/ Email/Address	Basis of Complaint ³	Summary Complaint Description	Action Taken/ Final Outcome if Resolved List dates of action steps including the dates complaint/ investigation begins and is administratively closed.	Status Open/ Closed

² **Lawsuit:** The protected class under Title II is disability. The protected classes under Title VI are Race, Color and Nation Origin.

³ **Basis of Complaint:** Specify Race, Color, National Origin, Disability, Sex, Age, Other.

Complaint/Comment Form

We want your feedback. If you would like to submit a complaint or comment, please complete this form, and submit it via email to brad.brummond@ci.merrill.wi.us or in person at the address below.

City of Merrill
 1004 E. 1st Street
 Merrill, WI 54452

You may also call us at 715-536-7112. Please make sure to provide your contact information in order to receive a response.

Section A: Accessible Format Requirements

Please check the preferred format for this document

<input type="checkbox"/> Large Print	<input type="checkbox"/> TDD or Relay	<input type="checkbox"/> Audio Recording	<input type="checkbox"/> Other (if selected please state what type of format you need in the box below)
Click or tap here to enter text.			

Section B: Contact Information

Name <input type="text"/>	Telephone Number (including area code) <input type="text"/>
Address <input type="text"/>	City <input type="text"/>
State <input type="text"/>	Zip Code <input type="text"/>
Email Address <input type="text"/>	

Are you filing this complaint on your own behalf?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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If no, please provide the name and relationship of the person for whom you are complaining and why you are completing the form on their behalf in the box below.

<input type="text"/>

Please confirm that you have obtained the permission of the aggrieved party if you are filing on behalf of a third party.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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Section C: Type of Comment

What type of comment are you providing? Please check which category best applies.

<input type="checkbox"/> Complaint	<input type="checkbox"/> Suggestion	<input type="checkbox"/> Compliment	<input type="checkbox"/> Other
------------------------------------	-------------------------------------	-------------------------------------	--------------------------------

Which of the following describes the nature of the comment? Please check one or more of the check boxes.

<input type="checkbox"/> Race	<input type="checkbox"/> Color	<input type="checkbox"/> National Origin	<input type="checkbox"/> Religion
<input type="checkbox"/> Age	<input type="checkbox"/> Sex	<input type="checkbox"/> Transportation Service	<input type="checkbox"/> Income Status
<input type="checkbox"/> Limited English Proficient (L.E.P)		<input type="checkbox"/> Americans with Disability Act (A.D.A)	

Section D: Comment Details

Please answer the questions below regarding your comment

Did the incident occur on the following type of service? <i>Please check any box that may apply.</i>	<input type="checkbox"/> Paratransit	<input type="checkbox"/> Shared Ride Taxi	<input type="checkbox"/> Bus
What was the date of the occurrence?	Click to add date in the following format: Day, month, year		
What was the time of the occurrence?	Click to add the time		
What is the name or identification of the employee or employees involved?	Click or tap here to enter text.		
What is the name or identification of others involved, if applicable?	Click or tap here to enter text.		
What was the number or name of the route you were on, if applicable?	Click or tap here to enter text.		
What was the direction or destination you were headed to when the incident occurred, if applicable?	Click or tap here to enter text.		
Where was the location of the occurrence?	Click or tap here to enter text.		
Was the use of a mobility aid involved in the incident?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Please add any additional descriptive details about the incident.	Click or tap here to enter text.		

In the box below, please explain as clearly as possible what happened and why you believe you were discriminated against.

Click or tap here to enter text.

Section E: Follow-up

May we contact you if we need more details or information?

Yes

No

If yes, how would you best liked to be reached? Please select your preferred form of contact below

Phone

Email

Mail

If you would prefer to be contacted by phone, please list the best day and time to reach you.

Click here to add your preferred time

Click here to add your preferred day

Have you filed a complaint with any other federal, state, or local agencies?

Yes

No

If yes, list agencies and contact information (agency name, address, email, phone).

Click or tap here to enter text.

Section F: Desired Outcome

Please list below, what steps you would like taken to address the conflict or problem.

Click or tap here to enter text.

Section G: Signature

Please attach any documents you have which support the allegation. Then date and sign this form and send it to the City of Merrill.

Name

Date: Click to add date in the following format: Day, month, year

Signature

Public Involvement Plan

The purpose of the **Public Involvement Plan** is to establish procedures that allow for, encourage, and monitor participation of all citizens within the **City of Merrill** service area including low income and minority individuals, persons with disabilities, and those with limited English proficiency (LEP).

While traditional means of soliciting public involvement may not reach such individuals, or might not allow for meaningful avenues of input, the intent of the **Public Involvement Plan** is to take reasonable actions to provide opportunities for historically under-served populations to participate in transportation decision making efforts.

Goal

The goal of public involvement is to offer opportunities for the engagement of all citizens within the **City of Merrill** service area to participate in the development of plans, programs, and services.

Strategies

To promote public participation, the **City of Merrill** uses the following strategies, as appropriate.

- Coordination and Consultation
 - Coordinate and consult with partners, stakeholders, program participants and their caregivers, and the public affected by the distribution of state and federal transit grant programs.
 - Seek guidance and input from WisDOT on public involvement mechanisms and strategies.
 - Maintain an electronic distribution list of all potential program participants, partners, stakeholders, etc.
- Accessibility and Information
 - Meetings
 - Adhere to state and federal public hearing requirements.
 - Provide a general notification of meetings, particularly forums for public input, in a manner that is understandable to all populations in the area.
 - Hold meetings in locations which are accessible and reasonably welcoming to all area residents with efforts to engage low-income, minority, LEP, and disabled community members.
 - Employ different meeting sizes and formats.
 - Provide avenues for two-way flow of information and input from populations which are not likely to attend meetings.
 - Make public information available in electronically accessible formats.
 - Use social media in addition to other resources to gain public involvement.

- Use radio, television, newspaper ads on stations and in publications in the service area that serve LEP populations. Outreach may also include audio programming available on podcasts.
- Expand traditional outreach methods by visiting grocery stores/markets and restaurants, community centers, libraries, faith-based institutions, local festivals, etc.
- Timeliness
 - Provide timely information about state and federal grant programs to affected program participants, the public, partner agencies, and other interested parties.
 - Provide adequate notice of public involvement activities and time for public review and comment.
- Public Comment
 - Work openly and diligently to incorporate public comments received and to notify respondents of final plans, reports, programs, etc.
 - Provide for early, frequent and continuous engagement by the public
- Social/Environmental Justice
 - Seek and consider the needs of traditionally underserved populations by participating in outreach efforts that address the needs of minority persons, the elderly, persons with disabilities, LEP individuals, and low-income households.
 - Determine what non-English languages and other cultural barriers exist to public participation within the service area.
- Training
 - Participate in training to continuously improve the knowledge and understanding of civil rights principles.
- Evaluation
 - Document and maintain records of public outreach efforts.
 - Review the effectiveness of public participation activities.
 - Seek news ways to providing public input opportunities.

Participation Techniques

The **City of Merrill** will use the following participation techniques as deemed appropriate. Participation techniques will be reviewed and modified each year, as necessary. If new techniques are tried and found to be successful, this list will be updated to include the new techniques.

- Booth at Community events (craft fair, festival, farmers market, parades, etc.)
- Advisory meetings and committees
- Direct mailings (letters, fliers, etc.)
- Website and social media
- Project-specific newsletter articles
- Public information meetings
- Legal advertisements
- Presentations to community partners, citizens/residents, etc.
- Press releases, meetings with local media representatives
- Surveys (telephone, internet, and public information meetings)
- Work with partner organizations

Public Outreach Activities

The **City of Merrill** maintains a log/record of the various types of outreach activities it uses to promote public participation. On an annual basis, the **City of Merrill** reviews its log of outreach activities to determine if additional or different strategies are needed to promote public participation.

The direct public outreach and involvement activities conducted by the **City of Merrill** are summarized below. Information collected on the size, location, meeting format, number of attendees, etc. as well as the scope of the distribution method (e.g., information posted to social media, fliers in grocery stores and community centers, etc.) will be used for future planning efforts.

Summary of Outreach Activities					
Event Date	Name of Event/Activity	Date Publicized and Communication Method (Public Notice, Posters, Social Media, etc.)	Outreach Method (Meeting, Focus Group, Survey, etc.).	Staff Members Responsible	Notes
Ongoing	Website, Facebook, Twitter	Website and Social Media Materials	Website and Social Media Materials	MTS Staff works with IT	City of Merrill website
Various	Community Events, e.g., August Community Night Out, December Tour of Lights	Published in newspaper prior to event, posters put on buses	Website, Facebook, Newspaper, posters on bus	MTS Staff	Staff onsite to answer questions, bus on display and open for tours, tour to see holiday lights
Ongoing	Brochures and Posters	Library, City Hall, Medical Facilities	Brochures and Posters	MTS Staff	
Ongoing	Administrative Committee and City Council Meetings	City Hall Bulletin Board, City Website, newspaper and radio	Discuss Transportation Route Changes – Service and Fares	MTS Staff, Board	
Various	Radio Interview and TV News Story	Radio Interview and TV News Story on local TV channel	Radio/TV	MTS Staff Board	
Ongoing	Presentations to groups or at events (e.g., Multicultural Center, ADRC, Hmong Cultural Center, Hispanic Community Health, Resource Center, etc.)	As requested, and as invited	As requested, and as invited	MTS Staff, Board	

Limited English Proficiency (LEP) Plan

Overview

[Title VI of the Civil Rights Act of 1964, 42 U.S.C 2000d, et seq](#) and its implementing regulations state that no person shall be subjected to discrimination on the basis of race, color, or national origin. The denial of language assistance services can be evidence of discrimination on the basis of national origin or disability under some circumstances.

Recipients of federal financial assistance are required to implement language assistance in accordance with guidelines of the federal agency from which the funds are provided. [FTA Circular 4702.1B – Title VI Requirements and Guidance for FTA Recipients](#) provides guidance and instructions for language assistance plan development.

The US DOT “[Policy Guidance Concerning Recipients’ Responsibilities to LEP Persons](#)” discusses the concept of “safe harbor” with respect to the requirements for translation of written materials. The *Safe Harbor Threshold* is calculated by dividing the population estimate for a language group that “Speaks English less than very well” by the total population of the county. The *Limited English Proficiency (LEP) Safe Harbor Threshold* provision stipulates that for each LEP group that meets the LEP language threshold (5% or 1,000 individuals, whichever is less, of the population to be served) the **City of Merrill** must provide translation of vital documents (e.g., Notice of Nondiscrimination, Complaint Procedure and Complaint Form) in written format for non-English speaking persons.

Plan Summary

The **City of Merrill** has identified reasonable steps for providing language assistance for persons with limited English proficiency who wish to access services provided by the **City of Merrill**.

This plan outlines how to identify a person who may need language assistance, how to inform persons language assistance is available, the ways in which assistance may be provided, and staff training.

Plan Components

As a recipient of federal US DOT funding, the **City of Merrill** is required to take reasonable steps to ensure meaningful access to programs and activities by LEP persons.

This plan includes the following elements:

1. The results of the *Four Factor Analysis*, including a description of the following:
 - ✓ **Demography** of LEP persons in the service area
 - ✓ **Frequency** of contact with LEP persons
 - ✓ **Importance** of language assistance services
 - ✓ **Resources and costs** to provide language assistance services
2. A description of language assistance services:
 - ✓ How language assistance services are provided.
 - ✓ How LEP persons are informed of the availability of language assistance services.

- ✓ How the language assistance plan is monitored and updated.
- ✓ How employees are trained to provide language assistance to LEP persons.

Meaningful Access - Four Factor Analysis

To prepare this plan, the **City of Merrill** conducted a four-factor analysis which considers the following:

Factor 1 - Demography

Number and proportion of LEP persons with language assistance needs who may be served or are likely to encounter a City of Merrill program or service.

The greater the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population, the more likely language services are needed.

This plan uses [US Census Bureau – American Fact Finder \(2011-2015\)](#) language data available at the county level in Wisconsin. More data is available on the [US Census Bureau ACS website](#).



Lincoln County
LEP Data 2015 E...

The US Census Bureau – American Fact Finder (2011-2015) data shows there are numerous languages spoken in Lincoln County. Some of these languages include Spanish, German, Hmong, Chinese, Japanese, Tagalog, and Gujarati. After English, the second largest language group is Spanish.

The Safe Harbor Threshold is calculated by dividing the population estimate for a language group that “speaks English less than very well” by the total population in the county served. The LEP Safe Harbor Threshold provision stipulates that for each LEP group that meets the LEP language threshold (5% or 1,000 individuals, whichever is less), the **City of Merrill** must provide translation of vital documents in written format for non-English speaking persons.

US Census data shows that in Lincoln County with a population estimate of 26,985; 57 persons have identified themselves as Spanish speaking and “speaks English less than very well”. This language group is less than 1% and below the 5%, or 1,000 persons threshold of the population to be served. This means the **City of Merrill** is not required to provide written translation of vital documents. All other language groups listed above are also below the Safe Harbor Threshold.

In the future, if the **City of Merrill** meets the Safe Harbor Threshold for additional language groups, it will consider providing written translation of vital documents in such languages and consider measures needed for oral interpretation.

Factor 2 – Frequency

Frequency of contact with LEP persons.

Interactions with LEP persons is an important feedback mechanism as the more frequent the contact, the more likely enhanced language services will be needed.

The **City of Merrill** reviewed the frequency with which its staff and transit commission have or could have contact with persons with limited English proficiency in the conduct of **City of Merrill** activities. This includes a review of documented phone inquiries, office visits, and encounters at public meetings

and community events. Within the last year, **City of Merrill** staff and transit commission had (0) Zero requests for interpreters and (0) Zero requests for translated program documents in any setting.

City of Merrill staff and transit commission are trained on what to do when they encounter a person with limited English proficiency.

The **City of Merrill** staff and transit commission tracks the number of encounters and considers adjustments to its outreach efforts to ensure meaningful access to all persons and specifically LEP and minority populations. The *Log of Language Assistance Encounters* is a tool to gather information on persons needing language assistance (**Appendix 7**).

Log of Language Assistance Encounters

Date	Time	Language Spoken By Individual <i>(if available)</i>	Name and Phone Number of Individual <i>(if available)</i>	Service Requested	Follow Up Required	Staff Member Providing Assistance	Notes

If a language barrier were to exist, **City of Merrill** works to provide a reasonable accommodation. The “*I Speak*” *Language Identification Card* shown below is a document that can be used by **City of Merrill** staff to assist individuals. Additional languages can be added, as needed, to match the demographic changes of the **City of Merrill’s** service area. The languages included in the “*I Speak*” *Language Identification Card* below represent languages spoken within the **City of Merrill** service area.

“I Speak” Language Identification Card

Mark this box if you speak....	Language Identification Chart	Language
<input type="checkbox"/>	I speak English	English
<input type="checkbox"/>	Yo hablo español	Spanish
<input type="checkbox"/>	Kug has lug Moob	Hmong
<input type="checkbox"/>	我說中文	Chinese Simplified
<input type="checkbox"/>	E nói tiếng Việt	Vietnamese
<input type="checkbox"/>	나는한국어를	Korean
<input type="checkbox"/>	Marunong akong mag-Tagalog	Tagalog
<input type="checkbox"/>	Ich spreche Deutsch	German
<input type="checkbox"/>	Я говорю по-русски	Russian
<input type="checkbox"/>	Ja говорим српски	Serbian

Mark this box if you speak....	Language Identification Chart	Language
	मैं हँदी बोलते हँ	Hindi

Factor 3 – Importance

Nature and importance of language assistance.

Transportation plays a key role in connecting people to essential services. Language assistance services and community outreach activities such as engaging community organization(s) can help ensure the public and LEP populations have access to essential transportation services.

Transportation fare/service changes and eligibility requirements should be clearly communicated so the public and LEP persons can access essential programs and services. It is important that LEP individuals understand their rights and benefits when accessing transportation program and services to ensure they have been treated fairly.

Factor 4 – Resources and Costs

Resources available and overall cost to provide language assistance.

Given the few language assistance encounters, full multi-language translations of our programs and services related to transportation services is not warranted at this time. However, this information can be made upon request. Additionally, the **City of Merrill** can contact state and local governments and community agencies for translation assistance or consider the use of a language translation services, as needed.

The **City of Merrill** continuously explores ways to notify the public and LEP persons of transportation services. Outreach efforts include posting information on its website, utilizing social media, developing and printing brochure/materials, and having a visible community presence (e.g., posting information at libraries, community centers, grocery stores and participating in community events, farmer’s markets, local festivals, etc.). The cost is relatively low but the ability to reach the community members is high.

Language Assistance Services

Overview - Language Assistance Services

City of Merrill takes steps to provide meaningful access to LEP individuals who have difficulty communicating in English.

Additionally, the **City of Merrill** strives to offer the following measures:

- ✓ Post Title VI/ADA Nondiscrimination information on the **City of Merrill** website.
- ✓ Day to day operations:
 - Utilize the “*I Speak*” *Language Identification Card* or posters to identify the language and communication needs of individuals.
 - Maintain a *Log of Language Assistance Encounters* to capture information on the frequency of contact with LEP persons to determine whether additional language assistance services are needed to ensure meaningful access by LEP persons.
- ✓ At public meetings or other community events:

- Greet participants as they arrive at **City of Merrill** public meetings or community events.
- Use “I Speak” language identification cards at sponsored events.
 - Tools such as an “*I Speak*” *Language Identification Card* can gauge attendee’s ability to speak and understand English. Although translation may not be able to be provided at an event it helps identify needs at future events.
- Maintain a log of language assistance encounters at public meetings or other community events.
- ✓ Translation Services
 - The city will seek translation assistance from community organizations such as:
 - Lincoln County – Social Services
(715)536-6200, <https://www.co.lincoln.wi.us/social-services>
 - ECDC’s Multicultural Community Center - <https://www.ecdcwausau.org>,
(715)907-7082, wausuinfo@ecdcus.org
 - H2N – Hmong and Hispanic Communication Network -
<https://wipps.org/programs/h2n/>
 - Hmong American Center - <https://www.hmongamericancenter.org>
- ✓ Utilize Wisconsin Relay 7-1-1, the state of Wisconsin resource to assist with communication needs for individuals that are deaf, hard of hearing, deafblind, or those with a speech disability <http://www.wisconsinrelay.com/> This relay service is available in English-to-English, Spanish-to-Spanish (800-833-7813) and Spanish-to-English (877-490-3723).
- ✓ Utilize online resources such as Google Translate to assist with translation requests. A downside of this approach is accuracy therefore this option will be used on a limited basis. Instead, **City of Merrill** will seek assistance from fluent speakers.
- ✓ Make translated versions (or provide for the interpretation of relevant sections) of documents/publications available upon request, within a reasonable time frame.
- ✓ Prioritize the hiring of bilingual staff, as needed.

Public Outreach – Language Assistance Services

The following are measures **City of Merrill** takes to inform the public of language assistance services:

- ✓ Post the Title VI/ADA *Notice of Nondiscrimination* on its website. The notice includes a sentence written in Spanish and Hmong providing instructions on how to contact the **City of Merrill** to request information in another language.
- ✓ When encountering persons not proficient in English, **City of Merrill** staff will use the “*I Speak*” *Language Identification Card* to identify language and communication needs.
 - **City of Merrill** may not be able to immediately accommodate or assist individuals self-identifying as a person not proficient in English but will seek means to follow up with individuals to address language needs as soon as possible.
- ✓ Review outreach activities and information gathered from *Log of Language Assistance Encounters* to determine whether additional language assistance services are needed.
- ✓ Utilize translation services such as:
 - Government and community organizations such as:

- Lincoln County – Social Services
(715)536-6200, <https://www.co.lincoln.wi.us/social-services>
 - ECDC’s Multicultural Community Center - <https://www.ecdcwausau.org>,
(715)907-7082, wausuinfo@ecdcus.org
 - H2N – Hmong and Hispanic Communication Network -
<https://wipps.org/programs/h2n/>
 - Hmong American Center - <https://www.hmongamericancenter.org>
- ✓ Utilize Wisconsin Relay 7-1-1, the state of Wisconsin resource to assist with communication needs for individuals that are deaf, hard of hearing, deafblind, or those with a speech disability <http://www.wisconsinrelay.com/> and <http://www.wisconsinrelay.com/features> This relay service is available in English-to-English, Spanish-to-Spanish (800-833-7813) and Spanish-to-English (877-490-3723).

Monitoring, Evaluating and Updating the Plan

City of Merrill will review its language assistances services on an annual basis and examine the following:

- ✓ Document the number of LEP person contacts.
- ✓ Determine whether the need for translation services has changed.
- ✓ Determine which existing language assistance services are effective and sufficient to meet the needs of LEP persons.
- ✓ Determine whether complaints have been received concerning the **City of Merrill’s** failure to meet the needs of individuals regarding language assistance.
- ✓ Sufficiency of staff training.
- ✓ Determine whether financial resources are needed to fund language assistance services.

Training Staff

The following training will be provided to **City of Merrill** staff:

- ✓ Information on the **City of Merrill's** Title VI/ADA Non-Discrimination Plan and LEP responsibilities.
- ✓ Description of language assistance services offered to the public.
- ✓ Use of the "I-Speak Card" to assist individuals and document language assistance requests.
- ✓ How to handle Title VI/ADA Non-Discrimination complaints.

Appendix 7

Language Assistance Tools

"I Speak" Language Identification Card

"I Speak" Language Identification Card

Mark this Box if you speak...	Language Identification Chart	Language
	I speak English	English
	Yo hablo español	Spanish
	Kug has lug Moob	Hmong
	我說中文	Chinese Simplified
	E nói tiếng Việt	Vietnamese
	나는한국어를	Korean
	Marunong akong mag-Tagalog	Tagalog
	Ich spreche Deutsch	German
	Я говорю по-русски	Russian
	o magsalita ng Tagalog	Tagalog
	मैं हिंदी बोलते हैं	Hindi
	میں نے اردو بولتے ہیں	Urdu

Log of Language Assistance Encounters

Date	Time	Language Spoken By Individual <i>(if available)</i>	Name and Phone Number of Individual <i>(if available)</i>	Service Requested	Follow Up Required	Staff Member Providing Assistance	Notes

Language Translation Request Log

Date	Language Spoken By Individual <i>(if available)</i>	Name and Phone Number of Individual <i>(if available)</i>	Service Requested	Follow Up Actions (Was Translation Services Provided?)	Staff Member Providing Assistance	Notes

Demographic Representation Information⁴

A. Demographic Representation Table⁵

[FTA Title VI Circular 4702.1B](#) requires recipients which have transportation-related, non-elected boards, advisory council or committees, or similar bodies, to report membership of these committees broken down by race and include a description of efforts made to encourage participation of minority community members.

The table below depicts US Census county population data by race in Lincoln County and the membership of the **City of Merrill’s** transportation related non-elected committee/council/board.

Body	Caucasian	Hispanic/ Latino	Black/ African American	Asian American	Native American	Some Other Race	No Response
Lincoln County Population	94.8%	1.89%	0.7%	0.3%	0.4%	1.87%	---
Merrill Transit Commission	Participation on the Transit Commission is by Mayoral appointment.						

B. Efforts to Encourage Participation

The **City of Merrill** understands diverse representation on committees, councils and boards results in sound policy reflective of its entire population. As vacancies on non-elected committees, councils, and boards become available, the **City of Merrill** will make efforts to encourage participation of minority community members.

To encourage participation the **City of Merrill** will reach out to community organizations to connect with minority population groups in its service area. In addition, the **City of Merrill** will use creative ways to make participating realistic and reasonable, such as scheduling meetings at times best suited to its members.

⁴ If the **City of Merrill** has transit-related, non-elected planning boards, advisory councils or committees, or similar bodies, the membership of which is selected by the **City of Merrill**, Title VI regulations require the **City of Merrill** to provide a table depicting the membership of those committees broken down by race and a description of efforts made to encourage broad participation on such committees.

⁵ County data by race is available at the WisDOT website <https://wisconsindot.gov/Documents/doing-bus/local-gov/astnce-pgms/transit/compliance/title6-race.pdf> or the US Census Bureau website <http://data.census.gov>

**City of Merrill Transit System
FTA PROCUREMENT POLICY**

January 19, 2026

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1. INTRODUCTION

1.1. Purpose

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

- FTA Circular 4220.1F "Third Party Contracting Guidance" or latest version thereof;
- 2 CFR § 200.318 – 200.327

1.2. Applicability

This manual applies to all procurements undertaken and financed, in whole or in part, with FTA financial assistance provided to City of Merrill Transit System to support **open market procurements**. An open market solicitation is used to purchase a good or service by soliciting from any available source. Most grantee procurement activity will be undertaken on the open market. Open market procurements exclude:

- Employment Contracts;
- Real Estate Contracts; and
- Intergovernmental Agreements.

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

- Application of unreasonable requirements placed on firms in order for them to qualify to do business;
- Imposition of geographic preference standards in the selection of vendors;
- Imposition of unnecessary experience and excessive bonding requirements;
- Use of noncompetitive pricing practices between firms or between affiliated companies;
- Employment of noncompetitive awards to any person or firm on retainer contracts;
- Failure to recognize organizational conflicts of interest, which means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- Use of "brand name" specifications without listing its salient characteristics and not allowing "an equal" product to be offered; and
- Any arbitrary action in the procurement process.

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

1.3. Third Party Contracting Capacity

FTA regulations (2 CFR § 200.319(c) and FTA Circular 4220.1F, Chapter III, § 3a) require City of Merrill Transit System to have written procurement procedures. This policy is designed to meet FTA and WISDOT's requirements in this regard.

1.4. Relationship to Other Subrecipient Policies

The purpose of these purchasing policies and procedures are two-fold. First, the Subrecipient has established these policies and procedures to conform to the provisions of Federal procurement regulations that govern the Subrecipient's use of FTA and WISDOT funds. Second, these policies and procedures assure that materials, supplies, services and equipment required for efficient and effective operation of the transit program are procured with regard to an analysis of price, quality, quantity, terms and delivery specifications. These policies and procedures pertain only to the Subrecipient's purchases made with FTA funds for the transit program; purchases with local funds and for purposes other than transit should follow the applicable Arizona law.

These policies may not answer all questions related to purchasing; if any employee of City of Merrill Transit System has a question regarding these procedures, WISDOT should be contacted for clarification and guidance.

When City of Merrill Transit System undertakes any purchase utilizing FTA funds, this policy shall supersede any existing purchasing policy promulgated by the Subrecipient. When any conflict exists between this policy and the existing policies of the Subrecipient, the procedures in this policy shall prevail. If any employee of City of Merrill Transit System determines that a conflict exists between these policies and state and local law, City of Merrill Transit System shall contact WISDOT and communicate the conflict.

2. CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

2.1. Purpose

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

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

2.2. Definition of Key Terms

As used herein, the following definitions apply:

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

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

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

2.3. Applicability

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

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

2.4. Gifts

Any contractor, subcontractor, or supplier who has a contract with the Subrecipient; has performed under such a contract within the past year; or anticipates bidding on such a contract in the future shall be prohibited from making gifts or to providing favors to any individual defined in Section 2.2. who is charged with the duty of:

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

City of Merrill Transit System also prohibits all covered individuals defined in Section 2.2. who perform the functions listed above from receiving or accepting any such gift or favor.

2.5. Employee Conflicts of Interest

2.5.1. Conflicts of Interest

It shall be a breach of ethical standards for any City of Merrill Transit System employee to participate directly or indirectly in a procurement when the employee knows:

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

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

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

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

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

2.5.3. Employee Disclosure Requirements

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

In the event that the Procurement Officer has reason to believe that he/she or his/her immediate family has an interest that may be affected by his/her official acts or actions as a City of Merrill Transit System employee or by the official acts or actions of City of Merrill Transit System, he/she shall disclose the precise nature and value of such interest in a written disclosure statement.

2.5.4. Confidential Information

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

2.5.5. Solicitation Provision

City of Merrill Transit System shall insert the following provisions in all formal competitive solicitation documents for products and services:

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

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

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

2.6. Organizational Conflicts of Interest

The Procurement Officer and technical personnel are encouraged to work closely with the legal counsel to review all situations that appear to have the potential for an organizational conflict of interest.

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

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

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

3. City of Merrill Transit System RESPONSIBILITIES UNDER FEDERAL LAW

3.1. Third Party Contracting Capacity

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

3.2. Contract Administration System

City of Merrill Transit System must maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, state and local requirements. See Section 6 of this policy for a full discussion of contract administration.

3.2.1. Written Procurement Procedures

City of Merrill Transit System must maintain and follow written procurement procedures that address:

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

- (1) Sources – Descriptions of the availability and use of various sources of products and services are addressed in Section 4.
- (2) Resolution of Third Party Contracting Issues – Procedures related to the resolution of third party contracting issues are included in Section 6.8.

3.2.2. Adequate Third Party Contract Provisions

City of Merrill Transit System must include provisions in all of its third-party contracts that are adequate to form a sound and complete agreement.

3.2.3. Industry Contracts

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

3.2.4. Revenue Contracts

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

3.2.5. Record Keeping

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

- (a) Written Record of Procurement History – City of Merrill Transit System must maintain and make available to WISDOT and FTA written records detailing the history of each procurement. For all procurements above the micro-purchase level City of Merrill Transit System must maintain records relating to:
 - (1) Procurement Method – City of Merrill Transit System must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive;
 - (2) Contract Type – City of Merrill Transit System must state the reasons for selecting the contract type it used;
 - (3) Contractor Selection – City of Merrill Transit System must state its reasons for contractor selection or rejection;
 - (4) Contractor Responsibility – City of Merrill Transit System must provide a written determination of responsibility for the successful contractor;

- (5) Cost or Price – City of Merrill Transit System must evaluate and state its justification for the contract cost or price; and
 - (6) Reasonable Documentation – City of Merrill Transit System must retain documentation commensurate with the size and complexity of the procurement.
 - (7) Vendor Verification – City of Merrill Transit System must include verification of acceptance with a selected vendor/supplier/manufacturer through the Federal System of Award Management (SAM) for each project and associated project file.
- (b) Access to Records – City of Merrill Transit System must provide FTA and WISDOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance.
- (c) Use of Technology/Electronic Commerce – City of Merrill Transit System may use an electronic commerce system to conduct third party procurements. If City of Merrill Transit System uses an electronic commerce system, then the following requirements apply:
- (1) Sufficient System Capacity – City of Merrill Transit System's system must have sufficient system capacity necessary to accommodate all Federal requirements for full and open competition.
 - (2) Written Procedures – Before any solicitation takes place, City of Merrill Transit System must establish adequate written procedures to ensure that all information FTA/WISDOT requires for project administration is entered into the system and can be made readily available to WISDOT as needed.

3.3. Determination of Needs

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

3.4. Eligibility

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

3.5. Necessity

City of Merrill Transit System shall adhere to the following standards for avoiding the purchase of duplicative and/or unnecessary products and services it does not need.

3.5.1. Unnecessary Reserves

City of Merrill Transit System shall limit the acquisition of Federally-assisted property and services to the amount it needs to support its operations.

3.5.2. Acquisition for Assignment Purposes

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

- (a) General Prohibition – City of Merrill Transit System may contract only for its current and reasonably expected public transportation needs and may not add quantities or options to third party contracts solely to permit assignment to another party at a later date.
- (b) Changes in the Recipient’s Needs – WISDOT and FTA recognize that the quantity of property or services a recipient reasonably believes it may need at the time of contract award may change. City of Merrill Transit System's later needs might decrease due to changed circumstances or honest mistakes. In those situations, City of Merrill Transit System may assign its unneeded contract authority to another entity that would like to acquire the property or services.
- (c) Exceptions – These limits on assignments, however, do not preclude:
 - (1) Joint Procurements – City of Merrill Transit System and one or more other FTA recipients may enter into a single procurement at the same time to obtain advantages unavailable for smaller procurements.
 - (2) Participation in WISDOT Sponsored Vehicle Procurements – City of Merrill Transit System may enter into contracts developed by the State of Arizona to acquire vehicles. See Section 4.3 of this policy for a full discussion of state government purchasing schedules and contracts.
- (d) Procurement Size – For every procurement, City of Merrill Transit System shall consider whether to consolidate or break out the procurement to obtain the most economical purchase. Absent efforts to foster greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms and women’s business enterprises, City of Merrill Transit System shall not split a larger procurement merely to gain the advantage of micro-purchase or small purchase procedures.
- (e) Options – City of Merrill Transit System shall justify, as needed, all option quantities included in every solicitation and contract. An option is a unilateral right in a contract by which, for a specified time, City of Merrill Transit System may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.

- (f) Lease Versus Purchase – City of Merrill Transit System shall review lease versus purchase alternatives for acquiring property and shall prepare or obtain an analysis to determine the most economical alternative. If City of Merrill Transit System chooses to lease an asset then it must prepare a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset.
- (g) Lease of Rolling Stock – For rolling stock and related equipment, the Fixing America’s Surface Transportation (FAST) Act removed the requirement to demonstrate the cost effectiveness of leasing compared to purchasing described above in subsection (f). The FAST Act, however, now requires City of Merrill Transit System to submit a report to FTA within three years of executing a rolling stock lease that includes: (1) An evaluation of the overall costs and benefits of leasing rolling stock; and (2) A comparison of the expected short-term and long-term maintenance costs under a lease versus maintenance costs when buying rolling stock.
- (h) Specifications – City of Merrill Transit System's procurement specifications shall clearly describe the products or services to be procured and shall state how the proposals will be evaluated. City of Merrill Transit System's procurement specifications shall not be exclusionary, discriminatory, unreasonably restrictive or otherwise in violation of Federal or Arizona laws or regulations.

3.6. Contractor Responsibilities

City of Merrill Transit System, in awarding contracts, financed in whole or in part, with FTA financial assistance, shall follow guidance in this section to evaluate contractor capabilities to perform the contract.

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

3.6.1. Debarment and Suspension

Debarment and suspension regulations and guidance include the following provisions.

3.6.1.1. DOT Debarment and Suspension Regulations

U.S. Department of Transportation (DOT) regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200 apply to each third party contract at any tier of \$25,000 or more, to each third party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third party contract at any tier that must be approved by an FTA official irrespective of the contract amount (2 CFR § 1200). City of Merrill Transit System shall apply DOT’s debarment and suspension requirements to itself and each third-party contractor at

every tier to the extent required by DOT's regulations that incorporate the requirements of Office of Management and Budget (OMB), "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)" (2 CFR § 180).

3.6.1.2. System for Award Management

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

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

As a best practice, City of Merrill Transit System should print the screen with the results of the SAM.gov search to include in the procurement file. Alternatively, City of Merrill Transit System may collect a debarment and suspension certification from the prospective third party contractor or include a clause in the third party contract requiring disclosure. FTA notes that affirmative actions, such as checking SAM.gov or including a requirement for a signed certification, are preferred. As such, it shall be the policy of City of Merrill Transit System to verify that the prospective third party vendor is not listed as a debarred contractor on SAM.

3.6.2. Lobbying Certification and Disclosure

If a third-party contract will exceed \$100,000, before awarding the contract, City of Merrill Transit System will obtain a lobbying certification, and if applicable, a lobbying disclosure from a prospective third party contractor (see DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352).

3.6.3. Required Contract Clauses

In addition to the requirements outlined above, there are various required clauses that may apply to City of Merrill Transit System's third-party contracts, depending upon the type of procurement and the anticipated dollar value of said contract. It is the responsibility of City of Merrill Transit System to assess each procurement and determine the applicable FTA third party terms and conditions that should be included in the solicitation and contract documents. A listing of required third-party contract clauses is contained in the most recent FTA Master Agreement as well as FTA Circular 4220.1F, Appendix D. These clauses may include:

- All FTA Assisted Third Party Contracts and Subcontracts:
 - No Federal government obligation to third-parties
 - False or fraudulent statements or claims
 - Access to records
 - Federal changes
 - Civil rights

- Incorporation of FTA terms
- Energy conservation
- Safe operation of motor vehicles
- Prohibition on certain telecommunications and video surveillance services or equipment
- Federal tax liability and recent felony convictions
- Trafficking in persons
- Contracts Exceeding \$10,000:
 - Termination provisions
- Contracts Exceeding \$25,000:
 - Debarment and suspension
 - Notice regarding disputes, breaches, defaults, and litigation
- Contracts Exceeding \$100,000:
 - Byrd Anti-Lobbying Amendment
- Contracts Exceeding \$150,000:
 - Clean Air Act
 - Federal Water Pollution Control Act
 - Buy America (procurements involving iron, steel, manufactured products, and constructions materials)
- Contracts Exceeding the Simplified Acquisition Threshold:
 - Legal remedies for violation or breach
- Contracts for Construction:
 - Davis-Bacon Act
 - Copeland Anti-Kickback Act
 - Contract Work Hours and Safety Standards Act
 - Seismic safety
 - Veterans hiring preference
 - Bonding
- Contracts for Transit Operations:
 - School bus restrictions
 - Charter bus restrictions
 - Transit employee protective arrangements
 - Substance abuse requirements
- Miscellaneous:
 - Conformance with Intelligent Transportation Systems (ITS) national architecture
 - Cargo preference
 - Fly America
 - Patent rights
 - Rights in data and copyrights
 - Procurement of recovered materials
- Rolling Stock Certifications:
 - Bus testing
 - Transit Vehicle Manufacturer (TVM) compliance with DBE requirements
 - Pre-Award Buy America Certification
 - Pre-Award Purchaser's Requirements
 - Pre-Award Federal Motor Vehicle Safety Standards (FMVSS) Certification
 - Post-Delivery Buy America Certification

- Post-Delivery Purchaser's Requirements
- Post-Delivery FMVSS Certification

3.7. Bonding

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

3.7.1. Thresholds

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

3.7.1.1. Bid Guarantee

A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

3.7.1.2. Performance Bond

A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

3.7.1.3. Payment Bond

A "payment bond" 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. FTA has determined that payment bonds in the following amounts are adequate to protect Federal interest and will accept a local bonding policy that meets the following minimums:

- Less Than \$1 Million. Fifty percent of the contract price if the contract price is not more than \$1 million
- More Than \$1 Million but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million
- More Than \$5 Million. Two and one half million dollars if the contract price is more than \$5 million

3.7.2. Acceptable Sureties

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

3.7.3. Reduced Bonding

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

3.7.4. Excessive Bonding

City of Merrill Transit System will adhere to FTA’s rules on excessive bonding requirements (FTA Circular 4220.1F, Chapter IV, § 2h(1)(f)). However, if City of Merrill Transit System determines it has a material risk of loss because of a failure of the prospective contractor, bonding requirements may exceed those outlined in Section 3.7.1 only with the prior approval of WISDOT/FTA.

3.8. Preference for U.S. Property—Buy America and Build America, Buy America (BABA)

Any contract exceeding \$150,000 entered into by City of Merrill Transit System with FTA assistance requires that all iron, steel, manufactured products (including rolling stock), and construction materials used are produced or manufactured in the United States, unless FTA has granted a waiver authorized by Buy America or BABA regulations. FTA cautions that its Buy America regulations are complex and different from the Federal “Buy American Act” regulations in FAR Subparts 25.1 and 25.2.

Pursuant to BABA, contracts with any activity related to an infrastructure project with includes the construction, alteration, maintenance or repair of infrastructure such as the structures, facilities, and equipment for public transportation requires that all construction materials are manufactured in the U.S.

Construction materials includes non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), fiber optic cable (including drop cable), optical fiber, lumber, engineered wood, and drywall. Minor additions of articles, materials, supplies or binding agents to a construction material do not change the categorization of the construction material. Construction materials do not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

3.9. Accessibility

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

4. SOURCES OF ACQUISITIONS

4.1. Force Account

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

4.2. Joint Procurements

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

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

4.3. State or Local Government Purchasing Schedules or Purchasing Contracts

4.3.1. Definition

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

4.3.2. Small Quantity Conditions for Rolling Stock

To the extent practicable, City of Merrill Transit System will use the innovative procurement tools authorized under section 3019 of the FAST Act. If City of Merrill Transit System conducts a stand-alone procurement (i.e., not part of a state contract or joint/cooperative procurement) for fewer than five buses, it must prepare a written justification for not using an authorized "innovative procurement tool" pursuant to 49 USC § 5339(a)(10)(B).

4.3.3. Applicability of Federal Provisions

When obtaining property or services in this manner, City of Merrill Transit System must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document. While WISDOT takes all precautions to ensure that such provisions are in the original solicitation and contract documents, it is ultimately City of Merrill Transit System's responsibility to ensure such documents and certifications are obtained.

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

4.3.4. Federal Supply Schedules

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

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

4.3.5. Existing Contracts

City of Merrill Transit System may use existing contract rights as an acquisition source. An "existing contract" means a contract that, when formed, was intended to be limited to the original parties thereto.

4.3.5.1. Permissible Actions

Within the conditions set forth below, City of Merrill Transit System may use existing contract rights held by another recipient of FTA assistance:

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

4.3.5.2. Impermissible Actions

City of Merrill Transit System may not use Federal assistance to finance:

- (a) Improper Contract Expansion – A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the recipient’s reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.
- (b) Cardinal Changes – A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change or “tag-on”. A change within the scope of the contract is not a cardinal change or “tag-on”.

4.4. The Open Market

City of Merrill Transit System will acquire most of the property and services it needs through procurements in the open market using procedures described in Section 5 of this Manual.

5. PROCEDURES FOR OPEN MARKET PROCUREMENTS

5.1. Solicitation of Competitive Price Quotes, Bids or Proposals

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

5.2. Receipt and Evaluation of Unsolicited Proposals

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

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

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

5.3. Prequalification

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

If City of Merrill Transit System opts to prequalify bidders, offerors, and products for procurement purposes, the following conditions apply:

- City of Merrill Transit System must ensure that all prequalification lists it uses are current;

- City of Merrill Transit System must ensure that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition; and
- City of Merrill Transit System must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). City of Merrill Transit System is not required to hold a particular solicitation open to accommodate a potential supplier that submits products for approval before or during that solicitation nor must City of Merrill Transit System expedite or shorten prequalification evaluations of bidders, offerors, or products presented for review during the solicitation period.

5.4. Solicitation Requirements and Restrictions

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

5.4.1. Description of the Property or Services

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

5.4.1.1. Descriptive Elements

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

5.4.1.2. Quantities

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

5.4.1.3. Brand Name or Equal

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of a specific type of property. The salient characteristics of the named brand that bidders or offerors must provide must be identified.

5.4.1.4. Prohibited Practices

Solicitations with requirements that contain features that unduly restrict competition may not be used. City of Merrill Transit System shall not:

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

5.4.2. Evaluation Factors.

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

5.4.3. Permissible Contract Types

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

5.4.3.1. Firm Fixed Price

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

5.4.3.2. Cost Reimbursement

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

5.4.4. Prohibitive or Restricted Contract Types

The following contract types are prohibited or restricted:

5.4.4.1. Cost Plus Percentage of Cost

Cost plus Percentage of Cost type contracts are prohibited.

5.4.4.2. Time and Materials

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

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

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

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

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

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

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

5.4.8. Reservation of Right to Reject All Bids or Offers

The solicitation must specifically reserve City of Merrill Transit System's right to reject all bids or offers.

5.5. Methods of Procurement

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

5.5.1. Informal Procurements: Micro Purchases

5.5.1.1. Definition

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

5.5.1.2. Approval Authority

Micro-purchases must be approved in writing by one of the following City of Merrill Transit System employees:

- Transit Director

5.5.1.3. Competition

City of Merrill Transit System may acquire products and services valued at less than **(Micro Purchase Limit)** without obtaining competitive quotations. Micro-purchases should be distributed equitably among qualified suppliers.

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

5.5.1.4. Prohibited Divisions

The size or dollar value of procurements may not be divided or reduced merely to come within the micro purchase limit. The only allowable exception to this restriction is for the express

purpose of fostering greater participation of DBEs, small and minority firms and women's business enterprises in City of Merrill Transit System's Federally-assisted procurements.

5.5.1.5. Documentation

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

5.5.2. Informal Procurements: Small Purchases

5.5.2.1. Definition

FTA defines small purchases are those purchases of products and services, including construction services, that cost greater than \$10,000 but not more than \$250,000. For purposes of this policy, City of Merrill Transit System will consider small purchase those that cost greater than **(Micro Purchase Limit)** but not more than **(Small Purchase Limit)**.

5.5.2.2. Approval Authority

Small purchases must be approved in writing by one of the following City of Merrill Transit System employees:

- Transit Director

5.5.2.3. Required Competition

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

5.5.2.4. Prohibited Divisions

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

5.5.2.5. Documentation

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

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

5.5.2.6. Special Considerations

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

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

5.5.3. Formal Procurements

5.5.3.1. Definition

Formal purchases are those purchases of products and services that cost greater than the current Federal threshold of \$250,000. For purposes of this policy, City of Merrill Transit System will use formal procedures for all purchases over **(Small Purchase Limit)**.

5.5.3.2. Approval Authority

Large purchases must be approved in writing by the following City of Merrill Transit System employees or officials:

- Transit Director

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

5.5.3.3. Procurement Methods

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

- Sealed Bid method; and
- Competitive Proposal method.

5.5.3.4. Required Competition

Formal bids and competitive proposals must be publicly advertised.

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

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

5.5.3.5. Required Documentation

Every formal purchase must, at a minimum, be supported by a written independent cost estimate, formal bids or proposals, a written cost or price analysis as appropriate, a written justification and detailed rationale for contractor selection (including application of evaluation

criteria) and a written determination of the responsibility of the contractor. Additional documentation requirements are dependent upon the formal procurement method that is utilized to make the purchase.

5.5.3.6. Special Considerations

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

5.5.3.7. Procedural Methods for Sealed Bids

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

- (a) When Appropriate – The sealed bid method of procurement is the preferred method for acquiring products and services that, including construction services, cost greater than **(Small Purchase Limit)**. The sealed bid method of procurement may also be used for small purchases if it is determined to be appropriate. The sealed bid method of procurement is appropriate if the following conditions apply:
- (1) Precise Specifications – A complete, adequate, precise, and realistic specification or purchase description is available.
 - (2) Adequate Sources – Two or more responsible bidders are willing and able to compete effectively for the business.
 - (3) Fixed Price Contract – The procurement generally lends itself to a firm fixed price contract.
 - (4) Price Determinative – The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
 - (5) Discussions Unnecessary – Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.
- (b) Requirements for Sealed Bids – The following requirements apply to the sealed bid method of procurement:
- (1) Publicity – The Invitation for Bids must be publicly advertised.
 - i. The Procurement Officer shall ensure that sufficient time is allowed to prepare bids before the date of bid opening.

- ii. Notice of bidding opportunities may be provided in other ways in addition, but not as a substitute, to a published notice. The methods may include, but not necessarily be limited to:
 - a. Direct notice, based on compiled vendor lists or from pre-qualification list, sent to prospective offerors; or
 - b. Use of advertisement by electronic means.
- (2) Adequate Sources – Bids must be solicited from an adequate number of known suppliers.
- (3) Adequate Specifications – The Invitation for Bids, including any specifications and pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
- (4) Sufficient Time – Bidders must be allowed sufficient time to prepare bids before the date of bid opening.
- (5) Public Opening – All bids must be publicly opened at the time and place prescribed in the Invitation for Bids.
- (6) Fixed Price Contract – A firm fixed price contract must be awarded in writing to the lowest responsive and responsible bidder unless the Invitation for Bids specifically allowed for award of a fixed price incentive contract or the inclusion of an economic price adjustment provision.
- (7) Rejection of Bids – Any or all bids may be rejected if there is a sound, documented business reason.

5.5.3.8. Competitive Proposals

The competitive proposal method of procurement is a formal method in which written proposals are publicly solicited and a contract is awarded to the responsible offeror whose proposal, taking into consideration price and other factors, is considered to be the most advantageous to City of Merrill Transit System or that is considered to be the “best value” to City of Merrill Transit System. The vehicle through which proposals are solicited is Request for Proposals (RFP). The RFP document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a proposal and the forms on which proposals must be submitted, if applicable.

- (a) When Appropriate – The competitive proposal method of procurement is appropriate for the acquisition of products and services that cost greater than **(Small Purchase Limit)** when the nature of the procurement does not lend itself to sealed bidding and City of Merrill Transit System expects that more than one source will be willing and able to submit a proposal. The competitive proposal method of procurement may also be used for small purchases if it is determined to be appropriate. The competitive proposal method of procurement may not be used for the procurement of construction services. The competitive proposal method of procurement is appropriate when any of the following circumstances are present:
 - (1) Type of Specifications – The products or services to be acquired are described in a performance or functional specification, or if described in detailed technical specifications, other circumstances such as the need for

discussions or the importance of basing contract award on factors other than price alone are present.

- (2) Uncertain Number of Sources – Uncertainty about whether more than one bid will be submitted in response to an Invitation for Bids.
- (3) Price Alone Not Determinative – Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
- (4) Discussions Expected – Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals.

(b) Requirements for Competitive Proposals – The following requirements apply to the competitive proposal method of procurement:

- (1) Publicity – The Request for Proposals must be publicly advertised.
- (2) Evaluation Factors – All evaluation factors and their relative importance must be specified in the solicitation, but numerical or percentage ratings or weights need not be disclosed.
- (3) Adequate Sources – Proposals must be solicited from an adequate number of qualified sources.
- (4) Evaluation Method – A specific method must be established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
- (5) Price and Other Factors – An award must be made to the responsible offeror whose proposal is most advantageous to City of Merrill Transit System or that represents the “best value” to City of Merrill Transit System with price and other factors considered.
- (6) Best Value – City of Merrill Transit System may award a contract to the offeror whose proposal provides the greatest value to City of Merrill Transit System. To do so, the solicitation must inform potential offerors that the award will be made on a “best value” basis and identify what factors will form the basis for award. City of Merrill Transit System must base its determination of which proposal represents the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

5.5.3.9. Two-Step Procurements

City of Merrill Transit System may use two-step procurement procedures in both sealed bid and competitive proposal procurements, provided the opportunity for full and open competition is retained.

- (a) Review of Technical Qualifications and Approach – The first step is a review of the prospective contractors’ technical approach to City of Merrill Transit System’s request and their technical qualifications to carry out that approach followed by the establishment of a competitive range consisting of prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.
- (b) Review of Bids and Proposals Submitted by Qualified Prospective Contractors – The second step consists of soliciting and reviewing complete bids or proposals, including

price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, bids or proposals must be solicited from at least three qualified prospective contractors.

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

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

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

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

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

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

(c) Qualifications-Based Procurement Procedures – The following procedures apply to qualifications-based procurements:

- (1) Qualifications – Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award.
- (2) Price – Price is excluded as an evaluation factor.
- (3) Most Qualified – Price negotiations are first conducted with only the most qualified offeror.

- (4) Next Most Qualified - Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

5.6. Noncompetitive Procurements

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

5.6.1. When Appropriate

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

5.6.1.1. Competition Adequacy

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

5.6.1.2. Sole Source

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

- (a) Unique Capability or Availability – The products or services are available from only one source if one of the conditions described below is present:
 - (1) Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or

method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to City of Merrill Transit System only from one source and has not in the past been available to City of Merrill Transit System from another source.

- (2) Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.
 - (3) Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - (4) Unacceptable Delay – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling City of Merrill Transit System's needs.
- (b) Single Bid or Proposal – Upon receiving a single bid or proposal in response to a solicitation, City of Merrill Transit System should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
- (1) Adequate Competition – Competition is adequate when the reasons for a single response were caused by conditions beyond City of Merrill Transit System's control.
 - (2) Inadequate Competition – Competition is inadequate when the reasons for a single response were caused by conditions within City of Merrill Transit System's control.
- (c) Unusual and Compelling Urgency – City of Merrill Transit System may limit the number of sources from which it solicits bids or proposals when City of Merrill Transit System has such an unusual and urgent need for the products or services that City of Merrill Transit System would be seriously injured unless it were permitted to limit the solicitation. City of Merrill Transit System may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the products or services.
- (d) Authorized by WISDOT – City of Merrill Transit System may request permission from WISDOT to allow it to use noncompetitive proposals for a particular procurement.
- (e) When Prohibited – Less than full and open competition is not justified based on:
- (1) Failure to Plan – City of Merrill Transit System's lack of advance planning, resulting in limited competition, is not justification for a sole source or single bid award.
 - (2) Limited Availability of Federal Assistance – Concerns about the amount of Federal assistance available to support the procurement;

- (f) Procurement Procedures – The following requirements apply when City of Merrill Transit System completes a procurement utilizing less than full and open competition:
- (1) Potential Sources – City of Merrill Transit System must solicit offers from as many potential sources as is practicable under the circumstances.
 - (2) Sole Source Justification – City of Merrill Transit System must justify all sole source procurements in writing. Sole source procurement justifications must describe the reasons for why a sole source procurement is appropriate, state which of the authorized justifications listed in Section 5.6.1.2 are applicable, include a cost analysis and be signed by the Procurement Officer. If City of Merrill Transit System decides to solicit an offer from only one source, City of Merrill Transit System must justify its decision in writing. The written justification must include the same elements as a sole source justification except that it must state which of the authorized justifications listed in Section 5.6.1.2 are applicable to the sole source purchase.
 - (3) Cost Analysis – City of Merrill Transit System must prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. A price analysis shall not be adequate to justify a sole source purchase.
- (g) Exception for Procurement Activities Using Non-FTA Funds – When it is determined by the Procurement Officer to be in the best interest of City of Merrill Transit System, noncompetitive procurement procedures may be utilized to acquire professional or other transportation-related services that do not involve the use of FTA financial assistance. Any such determination must be made in writing and signed by the Procurement Officer.

5.7. Evaluation Requirements

The following standards shall apply to all evaluations of bids or proposals conducted by City of Merrill Transit System.

5.7.1. General

When evaluating bids or proposals received in response to a solicitation, City of Merrill Transit System shall consider all evaluation factors specified in the solicitation documents and shall evaluate the bids or offers proposals only on the evaluation factors included in those solicitation documents. City of Merrill Transit System may not modify its evaluation factors after bids or proposals have been received without re-opening the solicitation.

5.7.2. Options

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

5.7.2.1. Evaluation Required

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

5.7.2.2. Evaluation Not Required

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

5.7.2.3. Evaluators

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

5.8. Contract Award Requirements

The following standards shall apply to all contract award decisions made by City of Merrill Transit System:

5.8.1. Award to Other Than the Lowest Bidder or Offeror

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

5.8.1.1. Award Only to a Responsible Bidder or Offeror

City of Merrill Transit System may only award contracts to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract and who demonstrate that its proposed subcontractors also qualify as responsible. City of Merrill Transit System must consider such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources when making a determination of contractor responsibility. City of Merrill Transit System must also ensure that the contractor is not listed as a debarred or suspended contractor on the System for Award Management (SAM), which is maintained by the General Services Administration (GSA),

at the time of contract award. Entities that are listed as debarred or suspended contractors on SAM may not be determined to be responsible contractors by City of Merrill Transit System. For every procurement action above the micro-purchase level, City of Merrill Transit System must make a written determination of the responsibility of the contractor and include such determination in the applicable contract file (See Section 3.6).

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

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

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

5.8.1.2. Rejection of Bids and Proposals

City of Merrill Transit System may reject all bids or proposals submitted in response to an Invitation for Bids or Request for Proposals. City of Merrill Transit System must include a statement in its solicitation document reserving the right to reject all bids or proposals.

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

5.9. Independent Cost Estimate and Cost and Price Analysis

5.9.1. Independent Cost Estimate

For every procurement, City of Merrill Transit System shall make a written independent estimate of cost prior to receiving price quotes, bids or proposals.

5.9.2. Cost or Price Analysis

City of Merrill Transit System shall perform a cost or price analysis in connection with every procurement over \$250,000 and for all contract modifications.

5.9.2.1. Price Analysis

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

5.9.2.2. Cost Analysis

City of Merrill Transit System must perform or obtain a cost analysis when:

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

6. CONTRACT ADMINISTRATION REQUIREMENTS AND CONSIDERATIONS

6.1. City of Merrill Transit System Staff Responsibilities

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

6.2. Administrative Restrictions on the Acquisition of Property and Services

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

6.2.1. Legal Eligibility

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

6.2.2. Scope of the Project

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

6.2.3. Period of Performance

City of Merrill Transit System will use sound business judgment and be judicious in establishing and extending a contract's period of performance.

6.2.3.1. General Standards

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

6.2.3.2. Time Extensions

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

6.2.3.3. Authority to Extend

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

6.3. Federal Cost Principles

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

OMB guidance for grants and agreements, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR § 200, applies to project costs incurred City of Merrill Transit System.

6.4. Payment Provisions

City of Merrill Transit System will follow the provisions of this section when using FTA funds to support its third party contracts.

6.4.1. Financial Support for the Project

Costs may only be incurred by City of Merrill Transit System if WISDOT has awarded a financial assistance contract to City of Merrill Transit System.

6.4.1.1. Progress Payments

Progress payments are payments for contract work that has not been completed. City of Merrill Transit System may use WISDOT assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

6.4.1.2. Adequate Security for Progress Payments

Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement

scenarios and factual circumstances. City of Merrill Transit System should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.

6.4.1.3. Adequate Documentation

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

6.4.1.4. Percentage of Completion Method

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

6.5. Protections Against Performance Difficulties

City of Merrill Transit System shall include provisions in its third party contracts that will reduce potential problems that might occur during contract performance, as follows:

6.5.1. Changes

City of Merrill Transit System shall include provisions that address changes and changed conditions in all third party contracts except for routine supply contracts.

6.5.2. Remedies

City of Merrill Transit System shall include provisions that address remedies in its third party contracts. Provisions related to remedies may include provisions for:

6.5.2.1. Liquidated Damages

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

6.5.2.2. Violation or Breach

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

6.5.2.3. Suspension of Work

City of Merrill Transit System may include provisions pertaining to suspension of work in its third party contracts.

6.5.2.4. Termination

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

6.6. Contents of Complete Contract Files

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

6.6.1. Written Record of Procurement History

City of Merrill Transit System shall maintain written records detailing the history of the procurement, including records relating to:

6.6.1.1. Procurement Method

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

6.6.1.2. Contract Type

City of Merrill Transit System must state the reasons for selecting the contract type it used.

6.6.1.3. Contractor Selection

City of Merrill Transit System must state its reasons for contractor selection or rejection, including written justification and evaluation documents.

6.6.1.4. Contractor Responsibility

City of Merrill Transit System must provide a written determination of responsibility for the successful contractor.

6.6.1.5. Cost or Price

City of Merrill Transit System must evaluate and state its justification for the contract cost or price, including the independent cost estimate and cost or price analysis.

6.6.1.6. Reasonable Documentation

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

6.7. Access to Records

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

6.8. Contract Administration and Close-Out Documents

City of Merrill Transit System shall maintain written records detailing the performance and close-out of the contract, including records relating to:

6.8.1. Contractor Performance

City of Merrill Transit System must maintain documents related to contractor adherence to budget and schedule, compliance with contract terms and conditions, DBE participation, progress reports, disputes and disciplinary actions.

6.8.2. Contract Deliverables

City of Merrill Transit System must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables.

6.8.3. Contract Changes

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

6.8.4. Contract Payments

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

6.8.5. Contract Close-Out

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

6.9. Protest Procedures

6.9.1. Statement of Policy

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

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

City of Merrill Transit System shall give timely notification to WISDOT when it receives a third party procurement protest and will keep FTA informed about the status of any such protest. City of Merrill Transit System shall disclose all information about any third party procurement protest to WISDOT upon request.

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

6.9.2. City of Merrill Transit System Staff Responsibilities

The following staff responsibilities shall be assigned in all protests:

- Procurement Officer – Responsibilities include: ensuring that the City of Merrill Transit System Protest Procedure is included in all solicitation documents; and providing information to and assisting the legal counsel with the resolution of protests.
- legal counsel – Responsibilities include: reviewing all procurement protests; and advising and assisting the Subrecipient as needed with the resolution of all procurement protests.

6.9.3. Solicitation Provision

City of Merrill Transit System shall insert the following provision in all solicitation documents:

6.9.3.1. Pre-Proposal Protests

All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Procurement Officer as specified below not later than ten (10) business days prior to the deadline for submission of bids/proposals.

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

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

6.9.3.2. Pre-Award Protests

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

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

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

6.9.4. Requirements for Protests

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

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by City of Merrill Transit System.

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

6.9.5. Protest Response

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

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

6.9.6. Review of Protests by WISDOT

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