

**An Audit of Emergency Contract Extensions
for Paratransit Services Negotiated by
Milwaukee Transport Services, Inc. for a
3-Year Period Effective November 1, 2012**

April 2013

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April 15, 2013

To the Honorable Chairman
of the Board of Supervisors
of the County of Milwaukee

We have completed *An Audit of Emergency Contract Extensions for Paratransit Services Negotiated by Milwaukee Transport Services, Inc. for a 3-Year Period Effective November 1, 2012.*

The attached audit report identifies five key factors that contributed to MTS management abandoning its competitive proposal process for paratransit van service in 2012 and instead negotiating emergency contract extensions with its existing vendors. The report concludes that there is a need for improved clarity in the lines of accountability for management of the Milwaukee County Transit System.

An estimate of the fiscal implications of the emergency contract extensions is provided. The report also identifies a limited number of options that could be considered for terminating the emergency contract extensions and includes a recommendation for MCDOT and the Office of Corporation Counsel to explore those and any other possibilities for recovering some of the negative fiscal implications of the emergency contract extensions without disrupting paratransit van services.

The report provides recommendations to address specific issues noted during the audit.

A response from the Milwaukee County Department of Transportation (MCDOT), with input from MTS, Inc. is included as **Exhibit 5**. We appreciate the cooperation extended by staff and management from MCDOT, MTS and the Office of Community Business Development Partners during the course of this audit.

Please refer this report to the Committee on Finance, Personnel and Audit.

Jerome J. Heer
Director of Audits

JJH/DCJ/cah

Attachment

cc: Scott B. Manske, Milwaukee County Comptroller
Milwaukee County Board of Supervisors
Chris Abele, Milwaukee County Executive
Don Tyler, Director, Department of Administrative Services
Brian Dranzik, Director, Department of Transportation
Lloyd Grant, Managing Director, MTS, Inc.
Kelly Bablitch, Chief of Staff, County Board Staff
Craig Kamholz, Fiscal & Budget Administrator, DAS
Steve Cady, fiscal & Budget Analyst, County Board Staff
Carol Mueller, Chief Committee Clerk, County Board Staff

An Audit of Emergency Contract Extensions for Paratransit Services Negotiated by Milwaukee Transport Services, Inc. for a 3-Year Period Effective November 1, 2012

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Summary

On March 17, 2013 an article published in the *Milwaukee Journal-Sentinel* chronicled a process under which competitive proposals were sought in 2012 for the provision of paratransit van services to residents of Milwaukee County with disabilities. According to the article, there were multiple problems encountered during the process. An appeal of the initial contract award decision and related management decisions led to the negotiation of separate three-year emergency contract extensions with the two existing vendors. According to the authors of the article, the cost over the life of the contract extensions totaled approximately \$8.6 million more than the presumptive winning proposal.

An immediate detailed review and audit of events leading to the execution of the emergency contracts was directed by both the Milwaukee County Comptroller and the County Board of Supervisors. This report fulfills the directives of both the Comptroller and the County Board.

Paratransit Services in Milwaukee County

The Milwaukee County Department of Transportation (MCDOT) provides public transit services through the Milwaukee County Transit System (MCTS). Direct management and operation of the transit system, including paratransit services, is contractually provided by Milwaukee Transport Services, Inc. (MTS). The MCDOT provides administrative oversight of the MTS contract.

Transit Plus is the name of the program under which MTS provides accessible transportation services for those persons who cannot use an MCTS fixed-route bus due to a qualifying disability under the Americans with Disabilities Act (ADA). Paratransit operations include the provision of client orientation to transportation services as well as demand responsive transportation. There are two forms of transportation provided under the Transit Plus program, taxicab service, for more ambulatory clients, and van service for more physically challenged clients. Under the contracts that expired October 31, 2012, there were two van service providers. Transit Express provided service for clients in the northern portion of the County, while First Transit provided service for clients in the southern portion of the County. In its 2012 RFP solicitation, MTS entertained proposals for each service area individually, as well as for serving Milwaukee County as a whole. The reason for this modification is, due to a significant reduction in van service ridership in recent years, MTS reasoned that it potentially could be more economical for a single vendor to provide service for the entire County.

The Facts of the Procurement

Provisions in the management and operations agreement require MTS to follow all applicable Federal Transit Administration (FTA) and Milwaukee County procurement procedures. Through the management and operations agreement, Milwaukee County delegates responsibility for procurements to MTS. To comply with those provisions, MTS has developed written procedures that closely mirror the County's Chapter 32 procurement ordinance. The process utilizes the FTA concept of a 'Best Value' procurement that parallels the County's 'Negotiations and Competitive Proposals' process described in s. 32.36 of the County Ordinances. An abridged version of the MTS procurement procedures is presented here; the full text of the procedures is presented as **Exhibit 2**.

Key Factors Leading to the Emergency Contract Extensions

A detailed and comprehensive timeline of events as they unfolded during MTS's 2012 solicitation of proposals for paratransit van services is presented in **Section 1** of this report.

Five key factors contributed to MTS management abandoning its competitive proposal process for paratransit van service in 2012 and instead negotiating emergency contract extensions with its existing vendors. While none of the five factors, in isolation, would have triggered that outcome, their cumulative effect resulted in MTS management concluding that the contract extensions were its only option to avoid interruption in critical services to a dependent clientele. The five key factors resulting in the emergency contract extensions were:

- An initial delay of 23 days in the development of specifications by MTS' Transit Plus staff for inclusion in the RFP solicitation.
- A subsequent delay of 22 days to determine a Disadvantaged Business Enterprise (DBE) goal for the eventual contract award, to be included in the RFP solicitation. Milwaukee County's Office of Community Business Development Partners (CBDP) is responsible for the establishment of contract goals for all County contracts, including those awarded by MTS.
- An additional delay of 22 days while MTS awaited written guidance from the Federal Transit Authority (FTA) regarding a procedural matter. The actual time elapsed from the request for guidance until the written response arrived was 52 days.
- A 10-day delay from the initial date scheduled for the Appeals Committee hearing on Transit Express' appeal of the intended contract award. The delay was to accommodate advocates for persons with disabilities' desire to attend and have input in the hearing.
- Lack of a continuation clause in the existing paratransit van service contracts and an unwillingness on the part of both existing vendors at different points in the process to accommodate MTS requests for short term contract extensions at reasonable terms.

Fiscal Implications of Emergency Contracts

A calculation of the financial implications of the two 3-year emergency contract extensions for paratransit van services cannot be determined with certitude because the contract costs are estimates based on fixed rates per ride. Therefore, the actual annual cost of each contract is dependent on the number of rides provided. Consequently, calculation of the cost of the contract extensions must rely on estimated paratransit van ridership.

Assuming the same ridership estimates as contained in the RFP specifications, MTS will pay its two existing vendors a total of \$40.3 million. In addition, MTS paid the presumptive winning proposer \$225,000 for costs alleged to have been incurred for beginning preparations to assume the entire service area of Milwaukee County. MTS did not, however, demand supporting documentation to verify the validity of those alleged start-up costs. Therefore, assuming the same ridership figures that MTS used to evaluate proposals, the emergency contract extensions cost an estimated \$8.6 million more than the presumptive winning proposal.

However, paratransit van ridership has declined significantly in recent years. Therefore, MTS has recently projected lower ridership totals for paratransit van service during the next three years. These new estimates reduce the estimates upon which the 2012 proposals were made by 6.2% for the first year of the contract, by 8.3% in the second year, and by 10.1% for the third year. We reviewed monthly ridership data for 2011, 2012 and the first three months of 2013 and believe MTS' revised projections are reasonable and based on actual ridership patterns. Using the revised ridership figures, the estimated cost of the emergency contract extensions is reduced from \$8.6 million to \$7.9 million dollars.

Therefore, had there been no delays in the procurement process and any appeals were denied, we estimate the cost of the two 3-year emergency contract extensions for paratransit van services cost between \$7.9 million and \$8.6 million, depending on actual ridership during the contract period. Given recent trends, it is more likely that the figure will be closer to the lower value of the range than the higher. However, it should be noted that at the time the decision was made to execute the emergency contract extensions, the best information available indicated there would be a resulting cost of \$8.6 million.

One further note regarding the calculation of the cost of the emergency contract extensions. The presumptive winning proposal was made on the basis of one provider serving the entire County, while the emergency contract extensions were executed with two providers, each serving separate sections covering roughly half of the County.

Conclusions and Recommendations

Our review of the events leading to the issuance of the two three-year emergency contracts for paratransit van services and discussions with principal players suggests the need for improved clarity in the lines of accountability for management of the Milwaukee County Transit System. Specific accountabilities, lines of authority should be clearly delineated between the Milwaukee County Department of Transportation and Milwaukee Transport Services, Inc. regarding working relationships with the Federal Transit Administration and internal County departments such as the Office of Community Business Development Partners. This report includes recommendations to address these issues.

In addition, questions have been raised regarding the ability of MTS to terminate the emergency contract provisions and re-bid the paratransit van service contract. However, since the emergency contract extensions do not include a continuation of services clause, pursuing any of the above options begs the question: how could a continuation of paratransit van service to Milwaukee County's persons with disabilities be guaranteed? We identified a limited number of options that could be considered for terminating the emergency contract extensions and include a recommendation for MCDOT and the Office of Corporation Counsel to explore these and any other possibilities for recovering some of the negative fiscal implications of the emergency contract extensions without disrupting paratransit van services.

We appreciated the cooperation extended by management and staff of the Milwaukee Transport Services, Inc., the Milwaukee County Department of Transportation and the Office of Community Business Development Partners. A response by MCDOT management with input from MTS is attached as **Exhibit 5**.

Background

On March 17, 2013 an article published in the *Milwaukee Journal-Sentinel* chronicled a process under which competitive proposals were sought in 2012 for the provision of paratransit van services to residents of Milwaukee County with disabilities. According to the article, there were multiple problems encountered during the process. These included potential problems associated with two of the proposals, delays associated with an inquiry seeking procedural guidance from the Federal Transit Administration, an appeal of the initial contract award decision and related management decisions led to the negotiation of separate three-year contract extensions, awarded on an emergency basis, with the two existing vendors. According to the authors of the article, the cost over the life of the contract extensions, both of which went into effect November 1, 2012, plus additional costs approved by management, totaled approximately \$8.6 million more than the presumptive winning proposal.

Based on the March 17 article, later that same day the Milwaukee County Comptroller directed the Audit Services Division within the Office of the Comptroller to conduct an immediate review of the 2012 paratransit contract bid process. As part of that review, the Comptroller requested a detailed analysis of the following:

- the Request for Proposal (RFP) process;
- the responses to the RFP from vendors;
- the awarding of the emergency contracts;
- the review panel;
- the inquiry to the Federal Transit Administration;
- a calculation of the estimated fiscal impact to Milwaukee County over the duration of the emergency contracts.

On March 21, 2013 the Milwaukee County Board of Supervisors authorized and directed an audit of the emergency contracts to “better understand the facts of the procurement, including the related financial implications, and any recommendations to improve the current process.”

This report fulfills the directives of both the Comptroller and the County Board.

Paratransit Services in Milwaukee County

The Milwaukee County Department of Transportation (MCDOT) provides public transit services through the Milwaukee County Transit System. Direct management and operation of the transit system, including paratransit services, is provided by Milwaukee Transport Services, Inc. (MTS). MTS is a non-stock, non-profit corporation under Chapter 181 of Wisconsin State Statutes. MTS

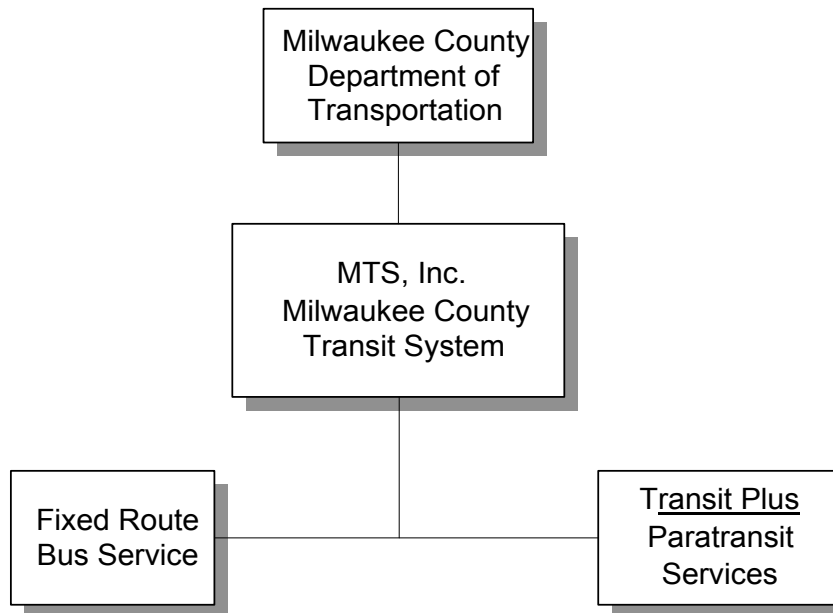
has provided these services since the Milwaukee and Suburban Transport Corporation was acquired by Milwaukee County in 1975. Under a contract with the County, the corporation provides two employees; a Managing Director and a Deputy Director. Total compensation under the contract is limited to the wages and benefits of these two individuals. While the corporation serves as the employer for all other management, supervisory and operating personnel, costs for these employees are treated as expenses of the transit system, not MTS.

The MCDOT provides administrative oversight of the MTS contract; conducts various transit-related studies; prepares and administers Federal and State transit grants. Division personnel also facilitate the acquisition of capital equipment, and provide design and construction services for capital facilities.

Transit Plus is the name of the program under which MTS provides accessible transportation services for those persons who cannot use an MCTS fixed-route bus due to a qualifying disability under the Americans with Disabilities Act (ADA). Paratransit operations include the provision of client orientation to transportation services as well as demand responsive transportation. There are two forms of transportation provided under the Transit Plus program, taxicab service, for more ambulatory clients, and van service for more physically challenged clients. This audit focuses on two emergency contract extensions negotiated by MTS management in October 2012 with the two vendors providing van services under contract with MTS.

Figure 1 shows an abbreviated organizational chart depicting the manner in which the Transit Plus program is operated.

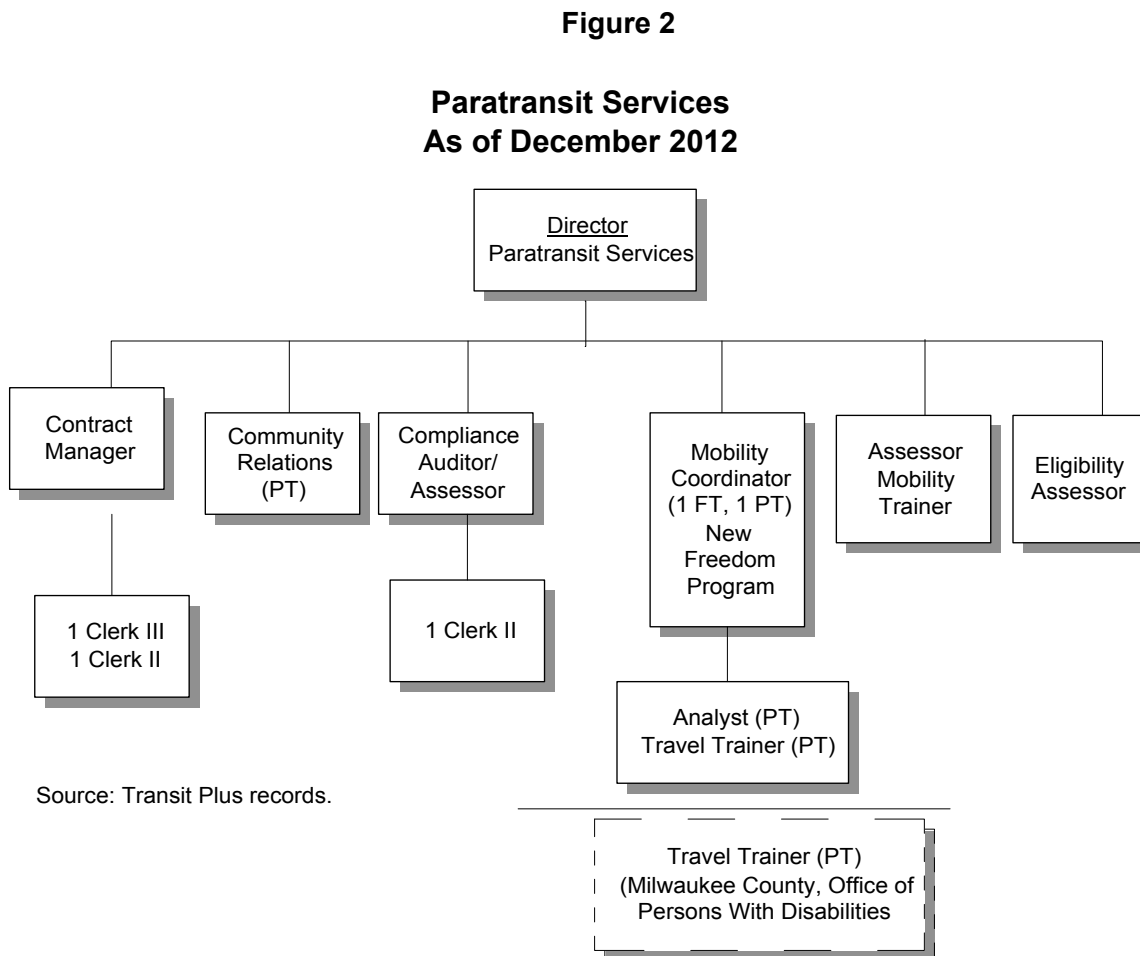
Figure 1
Milwaukee County Transit System



Source: 2013 Milwaukee County
Adopted Budget and Milwaukee County
Transit System Website

As of December 2012, Transit Plus was staffed with nine full time and four part time employees.

Figure 2 shows the 2012 MTS Transit Plus organizational chart.



In calendar year 2012, the Transit Plus program provided 459,805 van rides to approximately 3,800 unique clients. Payments to vendors for van rides in 2012 totaled \$12.9 million, resulting in an average cost of \$28.03 per ride. Individual clients purchase tickets at the rate of \$4 per ride from the program, while institutional agencies purchasing tickets on behalf of their clients are charged \$16.55 per ticket.

Two policy initiatives in recent years have contributed to a significant reduction in the number of van rides provided under the Transit Plus program:

- In 2009, MCTS began coordinating with the Milwaukee County Office for Persons with Disabilities and other County agencies to continue to provide free bus rides on the fixed-route system for eligible persons with disabilities through the Federal New Freedom Initiative. The County sponsored the New Freedom Pass, with the goal of continuing to expand mobility and reducing the need for paratransit service. Free rides tracked under the program increased from 69,696 in 2010 to 95,988 in 2012.

- In 2010, Transit Plus discontinued offering subsidized van ride tickets to institutions that received Title 19 funding, such as the County's Family Care program and Goodwill Industries. The rationale for this initiative was that Title 19 funding for those institutions includes a client transportation component, and therefore Transit Plus should not use its limited resources to cross-subsidize those programs.

Table 1 shows the trend in Transit Plus van rides during the five-year period 2008 through 2012. The data show that there were 43.4% fewer Transit Plus van rides in 2012 than in 2008.

<u>Year</u>	<u>Rides</u>	<u>% Change</u>
2008	812,409	
2009	874,416	7.6%
2010	832,136	-4.8%
2011	678,676	-18.4%
2012	459,805	-32.2%
Total Change, 2008-2012	-352,604	-43.4%

Source: Transit Plus program.

Under the contracts that expired October 31, 2012, there were two van service providers. Transit Express provided service for clients in the northern portion of the County, while First Transit provided service for clients in the southern portion of the County. In its 2012 RFP solicitation, MTS entertained proposals for each service area individually, as well as for serving Milwaukee County as a whole. Thus, the process could potentially result in either one or two vendors serving existing clientele for the new contract period. The reason for this modification is, due to the reduction in van service ridership, MTS reasoned that it potentially could be more economical for a single vendor to provide service for the entire County.

Section 1: The Facts of the Procurement

Milwaukee County has a management and operations agreement with Milwaukee Transport Services, Inc. (MTS) for operation of the Milwaukee County Transit System (MCTS). MTS is a non-stock, non-profit corporation under Chapter 181 of Wisconsin State Statutes. MTS has provided these services since the Milwaukee and Suburban Transport Corporation was acquired by Milwaukee County in 1975. Under its contract with the County, MTS provides two employees; a Managing Director and a Deputy Director. Total compensation under the contract is limited to the wages and benefits of these two individuals. While MTS serves as the employer for all other management, supervisory and operating personnel of the MCTS, costs for these employees are treated as expenses of the transit system and are paid by Milwaukee County, not MTS.

Through a management and operations agreement, Milwaukee County delegates responsibility for procurements to MTS.

Milwaukee County owns the fixed-route bus system rolling stock and equipment, as well as the facilities used to operate MCTS and provides funding for all expenses and liabilities of the system. Provisions in the management and operations agreement require MTS to follow all applicable Federal Transit Authority (FTA) and Milwaukee County procurement procedures. Through the management and operations agreement, Milwaukee County delegates responsibility for procurements to MTS.

The MTS Procurement Process

To comply with those provisions, MTS has developed written procedures that closely mirror the County's Chapter 32 procurement ordinance. Those procedures include a process used in 2012 by MTS to solicit proposals for paratransit van services. The process utilizes the FTA concept of a 'Best Value' procurement that parallels the County's 'Negotiations and Competitive Proposals' process described in s. 32.36 of the County Ordinances. An abridged version of the MTS

procurement procedures is presented here; the full text of the procedures is presented as **Exhibit 2**.

MTS Competitive Contract Negotiations Procedures

Evaluation & award factors include criterion other than price.

- **Negotiations are appropriate if:**
 - Adequate specifications are not available.
 - Discussions with proposers are required.
 - Evaluation & award factors include criterion other than price.
 - Other than a firm fixed price contract is to be awarded.
 - The contract may result in revenue being generated for MTS.

- **Request for Proposal (RFP) Process**
 - Independent cost estimate must be obtained and included in the contract file.
 - Issue RFP to all potential sources and advertise at least once at least two weeks before due date.
 - RFP's shall identify all evaluation factors and their relative importance. Numerical weights need not be disclosed.
 - Price shall be included as an evaluation factor.

- **Pre-proposal Conference (Optional)**
 - Held after RFP issued but before proposal submission.
 - Adequate notice of time, place, nature and scope of conference.
 - Provide all prospective proposers identical information.
 - Make complete record of the conference and furnish copy to all prospective proposers.

- **Receipt of Proposals**
 - Proposals shall be marked with the date and time of receipt.
 - Proposals shall be safeguarded from unauthorized disclosure.

- **Late Proposals and Modifications**
 - If late proposals and modifications cannot be considered, promptly notify proposer that it was received late and will not be considered.
 - Late proposals and modifications shall be held unopened until after award.
 - Director of Materials Management shall retain complete and sole discretion to waive the requirements of 1 and 2 if such waiver is deemed in the best interests of the county and is not subject to appeal to the Purchasing Committee.

After negotiations are concluded each proposer in the competitive range shall be required to submit a revised proposal and/or best and final offer at a uniform cutoff date and time.

- **Disclosure and Use of Information Before Award**
 - After receipt of proposals none of the information contained in them or concerning the number or identity of proposers shall be made available to the public or county government.
 - During the pre-award or pre-acceptance period, only the Director of Materials Management shall transmit technical or other information and conduct discussions with prospective proposers.
 - Prospective proposers may place restrictions on the disclosure and use of data in proposals.
- **Revised Offers and/or Best and Final Offer**
 - After negotiations are concluded each proposer in the competitive range shall be required to submit a revised proposal and/or best and final offer at a uniform cutoff date and time.
 - Late revised proposals or best and final proposals may be rejected without the right of appeal.
 - The Director of Materials Management may waive this provision if it is deemed to be in the best interests of MTS. Such decision is not subject to appeal.
- **Responsibility**
 - Awards must be made only to responsible contractors
 - Before making awards, Equal Employment Opportunity certification, past and current performance must be reviewed to confirm that contractor qualifies as responsible.
 - For contracts with a value of \$25,000 or greater, the purchasing agent shall review firms and principals on the System for Award Management (SAM). SAM is a database containing the names of all business entities barred from doing business with the Federal government or with Federal funding.
- **Awards**
 - Price is one factor to consider and the award is not required to be made to the lowest responsive, responsible bidder.
 - Awards shall be made to the responsive, responsible firm whose proposal overall is the most advantageous to MTS as determined in the sole opinion of the Director of Materials Management.
 - MTS reserves the right to reject all proposals if the Director of Materials Management determines such rejection to be in the public interest.
- **Protests to Award**
 - All unsuccessful proposers shall be notified by fax machine transmission of the pending contract award.

- Protest to the award must be delivered to the Director of Materials Management within 72 hours after receipt of notice.
- A protest must be in writing and clearly state the reason for it.
- The Director of Materials Management shall review the protest and notify the protestor of a decision by fax machine transmission within five days.
- No contract shall be awarded while a protest is pending.
- A protest that is untimely or fails to clearly state the reason for the protest is invalid.
- The decision of the Director of Materials Management disqualifying the protest for these reasons is final and cannot be appealed.

Protests from the decisions of the Director of Materials Management shall be made to the Purchasing Appeals Committee within 72 hours.

The Chairman of the Purchasing Appeals Committee shall notify all interested persons of the time and place of the hearing.

- **Appeals to Purchasing Appeals Committee**
 - Protests from the decisions of the Director of Materials Management shall be made to the Purchasing Appeals Committee by delivering a written request for appeal hearing both to the Director of Materials Management and the Purchasing Appeals Committee within 72 hours after receipt of the Director of Materials Management decision.
 - The request shall state the grounds upon which the protest is based and shall request an appeal hearing.
 - No contract shall be awarded until final disposition of the protest.
 - The Chairman of the Purchasing Appeals Committee shall notify all interested persons of the time and place of the hearing.
 - The Purchasing Appeals Committee shall affirm, reverse or modify the decision of the Director of Materials Management and its decision shall be final.
- **Unsuccessful Proposer Debriefing**
 - Unsuccessful proposers, upon written request, shall be debriefed as soon as possible and furnished the basis for the selection decision and contract award.
 - Debriefings shall focus on aspects of the unsuccessful proposal that could have been improved and should not make comparisons with the winning proposal.
 - Debriefing shall not reveal the relative merits or technical standing of competitors or the evaluation scoring.

Sequence of Events During MTS' 2012 Solicitation for Paratransit Services Proposals

Following is a timeline of events as they unfolded during MTS' 2012 solicitation of proposals for paratransit van services.

Timeline of MTS' Process for Soliciting Competitive Proposals for Paratransit Van Services in 2012

The Director of Materials Management's anticipated release date for the RFP at this point is middle to late April.

- **January 26, 2012** – MTS staff responds to MTS Managing Director's request for update on planning for bids on paratransit van services.
- **March 15** – MTS staff advises MTS Managing Director that progress continues on development of specification for paratransit contract.
- **March 28** – MTS Managing Director asks staff for summary of key changes in paratransit van services RFP.
- **April (First Week)** – MTS Director of Materials Management expecting specifications for paratransit services from MTS' Director of Paratransit Services. The current contract expires October 31, so the new contract start date is November 1. With this date in mind, the Director of Materials Management's anticipated release date for the RFP at this point is middle to late April. The previous time proposals were solicited for these services, for a contract start date of November 1, 2007, the RFP was issued on April 16.
- **April 25** – Specifications for paratransit services are received by the MTS Materials Manager. The Materials Manager makes minor edits and adds 'boilerplate' contents to complete the RFP.
- **April 30** – Email correspondence string indicates the Community Business Development Partners (CBDP) Office has not received information it deems necessary to properly establish sound Disadvantaged Business Enterprise (DBE) goals on a number of pending RFPs from MTS. The email strings indicate there was no direct contact between staff at MTS and CBDP. Rather, the email string began with a CBDP staff analyst going through the CBDP Director, to the MCDOT Director of Operations, and conveyed to the MTS Director of Materials Management and the MTS Director of Administration.
- **May 2** – Despite the above email string, with no further exchange of information, MTS sends RFP specifications to MCDOT for assignment of a DBE goal and approval of RFP specifications. MCDOT, which reports to the County Executive, is contractually required to complete its review for input within five business days (by May 9, 2012), including assignment of a DBE goal by the Office of

May 2 - MTS sends RFP specifications to MCDOT for assignment of a DBE goal and approval of RFP specifications.

Community Business Development Partners (CBDP). The CBDP Office reports to the Chairwoman of the County Board of Supervisors.

May 22 - Director of CBDP copies MTS Managing Director on an email to MCDOT Director of Operations asking for information needed to set a DBE goals on pending RFPs.

- **May 3** – The MCDOT Director of Operations requests and receives from MTS Director of Materials the DBE goal contained in the current paratransit van service contracts (7%). The MCDOT Director of Operations sends the RFP specifications and the current contractual DBE goal information to the CBDP Office and requests the establishment of a DBE goal for inclusion in the RFP.
- **May 21** – MCDOT Director of Operations sends an email to the CBDP Office asking about the status of the DBE goal for the paratransit van services RFP.
- **May 21** – MTS Director of Administration sends email to MCDOT Director of Operations with information for the CBDP Office regarding three pending DBE goal requests, including the paratransit van service request. The MTS Director of Administration notes that the CBDP Office had requested that MTS complete forms for each request regarding either a construction or professional service contract award for use in establishing the goals, but notes that MTS will follow its normal procurement process, clarifying that these are not, for example, construction projects under Milwaukee County ordinances.
- **May 22** (12:52 p.m.) – Director of CBDP copies MTS Managing Director on an email to MCDOT Director of Operations asking for information needed to set a DBE goal on pending RFPs.
- **May 22** (8:42 p.m.) – MTS Director asks MTS procurement and operations staff for status report. MTS Managing Director informs staff to do whatever is needed to get CBDP Office what it needs.
- **May 23** – MCDOT Director of Operations forwards the May 21 email he received from the MTS Director of Administration to the CBDP Office, expressing hope that the information would help move forward the development of the requested DBE goals.
- **May 24** – MTS Director of Administration sends email to MCDOT Director of Operations correcting an error its May 21 email documentation regarding its recommended paratransit van service DBE goal. This email is forwarded by the MCDOT Director of Operations to the CBDP Office.

May 31 - MTS receives DBE goal from MCDOT.

June 5- MTS releases RFP for competitive proposals with a due date for proposals of July 20, 2012.

MCDOT sends letter requesting guidance to FTA Regional Counsel.

- **May 31** – MTS staff advises MTS Managing Director that, per MCDOT, CDBP Office expected to release RFPs and DBE goals today.
- **May 31** – MTS receives DBE goal from MCDOT.
- **June 5** – MTS releases RFP for competitive proposals with a due date for proposals of July 20, 2012. By contrast, in 2007 the RFP was issued on April 16, with proposals due on June 1, 2007 for a November 1 contract start date.
- **June 25** – A scheduled pre-proposal conference is held. Questions from attendees are entertained. MTS procurement procedures require that a written Question & Answer summary be prepared and distributed to all prospective offerers.
- **July 10** – The written Q & A summary is distributed by MTS to all prospective offerers. Based on comments at the pre-proposal conference, van service ridership estimates contained in the RFP are revised downward by 11.5% for the first year and by 18.3% for years two and three of the contract.
- **July 20** – MTS receives four proposals.
- **July 20** – MTS Director of Materials Management performs a responsiveness review of proposals for mandatory items and determines that First Transit and another proposer submitted deficient proposals involving certifications of compliance with the Buy America Act (Buy America), an FTA requirement.
- **July 27** – MTS informs MCDOT of the deficient proposals and recommends resubmission of proposals; MCDOT concurs. A decision is made that written FTA guidance is needed on whether MTS can award contract based on revised proposals (updated Buy America certificates).
- **July 30** – MCDOT sends letter requesting guidance to FTA Regional Counsel as attachment to email and requesting that FTA follow up with MTS Director of Materials Management. The letter requests a response at counsel's earliest convenience but emphasizes that a contract must be awarded by the end of August.
- **August 1-3** – Presentations and discussions with the proposers (originally scheduled for last two weeks in

July). All proposers were permitted to submit revised proposals, due on August 8.

- **August 6** – FTA Office of Program Management & Oversight, emails several questions to MTS Director of Materials Management and he follows up that same day.
- **August 16** – Evaluation Committee completes technical scoring.
- **August 21** – Evaluation Committee is provided the price offer in each proposal.
- **August 29** – Evaluation Committee determines that First Transit's offer is the best value.
- **August 29** – MTS Director of Materials Management emails FTA and request update on request for guidance; FTA indicates matter under review and no additional information is needed.
- **August 31** – expected date of notice of intent to award contract – postponed pending guidance from FTA on Buy America certifications.
- **September 5** – MTS Managing Director asks MCDOT about status of FTA guidance; MCDOT says it will address the issue with the FTA during its on-site Triennial Audit visit (September 10-12).
- **September 11** – MCDOT Director of Operations speaks with FTA on status of guidance – guidance is written, but is being circulated within FTA for review.
- **September 10-12** – FTA at MTS for Triennial Review; FTA advises on the last day of the visit that guidance letter is being circulated at Region V for review.
- **September 19** – MTS offers to extend the incumbent contracts two months, until January 1, 2013, to ensure uninterrupted service in light of the procurement delays.
- **September 20** – Transit Express responds to the offer of extension but neither accepts nor rejects the offer.
- **September 20** – MTS Managing Director contacts MCDOT on delay in Buy America determination; gets

August 29 - MTS Director of Materials Management emails FTA and request update on request for guidance.

September 19 - MTS offers to extend the incumbent contracts two months, until January 1, 2013, to ensure uninterrupted service in light of the procurement delays.

September 20 - FTA letter received.

authorization to call FTA directly; talks with Region V Regional Counsel, on urgency of paratransit contract award situation. Counsel advises that so long as resubmission is extended to all proposers, revised certification can be accepted. MTS Managing Director directs MTS Director of Materials Management to immediately issue letter of intent to award. FTA letter received later that same day.

- **September 20** – First Transit indicates to MTS Director of Materials Management that it is willing to extend service within its service area under current contract terms for two months if, needed.
- **September 20** – Notice of intent to award the contract to First Transit was issued.

September 25 - Transit Express files a timely protest.

- **September 25** – Transit Express files a timely protest.
- **September 26** – Pursuant to the RFP, the MTS Director of Materials Management reviews and denies Transit Express' protest.
- **September 28** – MTS Managing Director makes request to Transit Express for 2-month extension to allow protest process to be completed.
 - This is a critical time period. Without short-term extensions, vendors may need at least 30 days start-up time to service the entire area; bidders not obligated to hold their bid price or offer after award date. Paratransit RFP no longer awardable for November 1 start date.

October 2- Transit Express refuses to consider request for 2-month extension without pre-conditions.

- **October 2** – Transit Express refuses to consider request for 2-month extension without pre-conditions; Transit Express files appeal of MTS denial of protest; Appeals Hearing is scheduled for October 9.
- **October 3–10** – Advocates for persons with disabilities contact MTS with concerns regarding the intended contract award and single service provider for the County; request opportunity to speak at the Appeals Hearing.
- **October 3** – MTS Deputy Director emails MCDOT Director a summary of the award process.
- **October 3** - MTS (via legal counsel) offered to extend the Transit Express contract for two months.

October 5- MTS offers to extend the Transit Express contract for six months at 2012 proposal price.

October 5 - Appeals Hearing is rescheduled to October 19 due to concerns expressed by advocates for persons with disabilities and Appeal Committee scheduling issues.

October 5- MTS Managing Director advises County Board and County Executive on status of paratransit services contract.

- **October 4** - Transit Express rejects 2-month extension.
- **October 4** - MTS offers to extend Transit Express contract for two to four months, depending on negotiation of terms
- **October 4** - Transit Express rejects MTS's offer for two to four month extension and counters with an offer of three year extensions for both Transit Express and First Transit.
- **October 5** – First Transit comments on Transit Express protest and appeal.
- **October 5** – Per FTA rule, MCDOT advises FTA Region V, of Transit Express appeal.
- **October 5** – MTS offers to extend the Transit Express contract for six months at 2012 proposal price.
- **October 5** (11:35 a.m.) – Transit Express rejects six-month extension—"a six month or even one year extension does not justify the capital investments Transit Express would need to make in order to continue to provide the quality services it has been providing for years." They seek a three year extension.
- **October 5** – MTS, by its counsel, offers First Transit a six-month extension of the current contract, but extended to the entire service area, while retaining the same level of service to customers. First Transit, by its counsel, expresses concern about capital investment costs. Both sides agree to speak again on Tuesday, October 9, giving First Transit time to confer.
- **October 5** – Appeals Hearing is rescheduled to October 19 due to concerns expressed by advocates for persons with disabilities and Appeals Committee scheduling issues.
- **October 5** – MTS Managing Director advises County Board and County Executive on status of paratransit services contract—that Transit Express price protection (offer) was \$7.5 million higher than First Transit, and given that appeal process is underway, MTS is actively working towards extensions of the

existing contracts or a contract extension with First Transit for the entire service area.

October 9 – MTS offers First Transit a nine-month extension of the current contract, but extended to the entire service area, at the current base rate.

- **October 9 (2:45 p.m.)** – Conference call with First Transit and MCDOT, followed up with email of First Transit offer—First Transit offers a seven-year contract (a two-year extension with a full, renegotiated five-year contract to follow; lowered productivity requirements from 1.95 rides per hour to 1.85; MCTS to purchase vehicles acquired during extension; a stop/loss price protection on fuel provision. The five year contract rate: Year 1 – bid year 3 rate; Year 2 – 2.8%; Year 3 – 2.8%; Year 4 – CPI; and Year 5 – CPI.
- **October 9 (4:48 p.m.)** – MTS offers First Transit a nine-month extension of the current contract, but extended to the entire service area, at the current base rate. No liquidated damages from November 1, 2012 to December 31, 2012. Productivity at 1.85 during the nine-month extension. 60 day notice of extension termination.
- **October 10 (11:14 a.m.)** – First Transit counters with a one-year extension, servicing the entire service area, at a price 20-25% higher than First Transit's RFP proposal. Five year contract: Year 1 – bid year 2 rate; Year 2 – bid year 3 rate; Year 3 – 2.8%; Year 4 – CPI; and Year 5 – CPI.
 - The length of the extension reduces the length of the RFP contract, in effect, raising the rate by which First Transit would be paid pursuant to its proposal.
 - Additionally, First Transit required a one-time up-front payment of \$100,000; all liquidated damages to be waived for the first six months of any extension or final contract; productivity to be set at 1.85 during the first six months and renegotiated thereafter; five year final contract but starting at the bid year 2 rate; and stop loss on fuel if the total cost per gallon with all taxes included exceeds \$5.00 in years 4-5.
- **October 10 (12:12 p.m.)** – MTS counters First Transit offer. Proposal #1 – one year extension at current rate, or Proposal #2 – three year extension under terms of current contract.
- **October 10 (4:20 p.m.)** – First Transit counters with one-year extension at current rate; at least six months

October 10 – MTS Director of Materials Management advises a contract award involving changes in First Transit’s proposal offer is not allowed and will not hold up to legal challenge.

notice of termination of extension before five year prorated contract begins; one time front end payment of \$100,000 for expedited start-up costs.

- **October 10** – MTS Director of Materials Management advises a contract award involving changes in First Transit’s proposal offer is not allowed and will not hold up to legal challenge. Process does not permit award of a contract while a protest is pending.
- **October 11 (8:26 a.m.)** – MTS offers First Transit a one-year extension for entire service area at current rate; productivity at 1.85; if Purchasing Appeal Committee affirms award, MTS will give six-month notice of termination of extension before commencement of five year contract per proposal terms.
- **October 11 (8:39 a.m.)** – MTS sends MCDOT a copy of MTS offer to First Transit.
- **October 11 (9:01 a.m.)** – MCDOT Director of Operations sends email to the County Executive’s Office advising that MTS is close to a one-year contract extension agreement with First Transit.
- **October 11 (11:47 a.m.)** – First Transit emails MTS on language change relative to terms under which extension can be terminated.
- **October 11 (12:20 p.m.)** – First Transit counters with the same terms as MTS’s offer, but with a CPI adjustment for the one year extension, a price adjustment for the fourth and fifth year of the RFP contract, no productivity rate for the first two months of the extension, and 1.85 for months 2 - 6 of the extension.
- **October 11 (12:50 p.m.)** – MTS emails MCDOT – close to agreement with First Transit to operate entire service area. Draft terms included with email.
- **October 11 (1:22 p.m.)** – MTS (via legal counsel) sends offer to First Transit for full service area.
- **October 11 (2:54 p.m.)** – First Transit seeks CPI adjustment to rates for years 1, 2, and 3 for 5 year contract “to account for inflation due to delay in contract start date.”
- **October 11 (4:09 p.m.)** – MTS requests meeting with MCDOT for Friday, October 12, to discuss risks of

October 11 (12:50 p.m.) – MTS emails MCDOT – close to agreement with First Transit to operate entire service area.

October 11 (4:09 p.m.) – MTS requests meeting with MCDOT for Friday, October 12.

one year extension with single provider and three year extensions with both providers—one-year extension with single provider very risky because an appeal is underway; MCTS cannot presume to know the outcome of the appeal; costly legal action highly likely to follow; and MTS must adhere to FTA procurement rules.

- **October 12** (8:30 a.m.) – MTS meets with MCDOT to discuss pros and cons of alternative approaches. According to the MTS Managing Director, he advises that a 3-year extension is risky—potential cost savings may not be realized, but that cannot be determined without going through appeal process, which puts paratransit customers at risk of being without service on November 1 and likely subjects MTS to a lawsuit. He advises one-year extension with First Transit is even riskier—appeal process still in play and must be followed; if appeal is upheld, bigger and costlier legal problem is likely; and federal funding will be put at serious risk. MTS gets go-ahead to work out 3-year extensions to keep paratransit services running.

- **October 12** (1:48 p.m.) – MCDOT Director of Operations emails County Executive’s Office indicating that a one-year extension with First Transit could not be worked out and that there would be three-year extension agreements with both First Transit and Transit Express.

October 12 (2:41 p.m.) – MTS advises MCDOT that separate agreements on three-year extension have been reached.

- **October 12** (2:41 p.m.) – MTS advises MCDOT that separate agreements on three-year extension have been reached; attorneys to put terms of agreements in writing; sends update communication to County Board and County Executive.

- **October 15** – MTS works on draft agreements – \$150,000 cancellation provision in First Transit agreement applies to termination for convenience.

- **October 16** (2:22 p.m.) – Transit Express seeking to “renegotiate” to remove the termination for convenience provision.

October 16 – Transit Express objects to a “termination for convenience” provision in the three-year extension.

- **October 16** - Transit Express objects to a "termination for convenience" provision in the three-year extension, insisting such a provision is a deal-breaker. MTS proposes termination language in the event that FTA restricts or removes paratransit funding.

- **October 16** - First Transit responds to the MTS offer by requiring liquidated damages for cancellation by convenience or for default. MTS responds by limiting liquidated damages to cancellation for convenience.
- **October 16 (5:13 pm)** - Transit Express sends draft agreement with language prohibiting termination for convenience, but verbally agrees to termination in the event of FTA restriction or elimination of funding for paratransit.
- **October 17** – MTS advises MCDOT that attorneys are close to finalizing agreements; Transit Express and First Transit seeking changes in termination of convenience clauses for commitment to three year term as condition of settlement.
- **October 17** – MTS via its legal counsel sends draft to Transit Express with language limiting termination for convenience in the event FTA restricts or eliminates funding for paratransit.
- **October 17** – First Transit, Inc. Emergency Extension Agreement Executed.
- **October 17** – Transit Express Emergency Extension Agreement Executed.
- **October 17** – MTS Managing Director provides an email update on emergency extensions for paratransit service contracts to County Board and County Executive.
- **October 18** – MTS reviews changes to be made to protest process procedure.
- **October 19** – Scheduled date of appeal hearing is cancelled.
- **October 19** – Communication from MTS Managing Director to Board Chairwoman on emergency extension of paratransit contracts.
- **October 24** – MTS sends executed agreements to MCDOT. (See **Exhibit 3** for emergency contract extension agreements.)
- **October 30 (12:36 p.m.)** – MTS Managing Director emails MTS staff—set up schedule for RFP process for paratransit service contract to be completed 2 months before contracts expire.

**October 19 –
Communication from
MTS Managing
Director to Board
Chairwoman on
emergency
extension of
paratransit
contracts.**

- **October 30** (1:46 p.m.) – MTS Managing Director emails CBDP Office on expedited goal setting process; CBDP Office advises that client service standards for goal setting changed to three days.
- **October 31** – Original paratransit van service agreements expire.
- **October 31** – MTS processes \$225,000 payment to First Transit for start-up costs incurred per settlement agreement. No supporting documentation of actual start-up costs was requested or received by MTS.
- **November 1** – Emergency Extension Agreements go into effect.

Section 2: Financial Implications of Emergency Contracts

Calculation of the cost of the contract extensions must rely on estimated paratransit van ridership.

A calculation of the financial implications of the two 3-year emergency contract extensions for paratransit van services cannot be determined with certitude because the contract costs are estimates based on fixed rates per ride. Therefore, the actual annual cost of each contract is dependent on the number of rides provided. Consequently, calculation of the cost of the contract extensions must rely on estimated paratransit van ridership.

Based on estimated ridership totals used by MTS in evaluating proposals, had the 2012 MTS competitive contract proposal process been completed in a timely manner and the decision of the Evaluation Committee had been upheld upon appeal, MTS would have paid the winning proposer \$31.9 million over the 3-year period November 1, 2012 through October 31, 2015. It should be noted that those ridership figures were downward revisions of the initial MTS estimates contained in the RFP. The ridership estimates were reduced from original estimates by 11.5% in the first year of the contract and by 18.3% for years two and three, after vendors questioned their validity at a pre-proposal conference.

MTS did not demand supporting documentation to verify the validity of \$225,000 in alleged start-up costs.

Assuming the same ridership estimates as contained in the RFP specifications, MTS will pay its two existing vendors a total of \$40.3 million. In addition, MTS paid First Transit, the presumptive winning proposer, \$225,000 for costs alleged to have been incurred for beginning preparations to assume the entire service area of Milwaukee County. MTS did not, however, demand supporting documentation to verify the validity of those alleged start-up costs. Therefore, assuming the same ridership figures that MTS used to evaluate proposals, the emergency contract extensions cost an estimated \$8.6 million more than the

presumptive winning proposal. This information is presented in **Table 2.**

Table 2		
Estimated Cost of Paratransit Van Service Emergency Contract Extensions Using Ridership Estimates Used to Evaluate Proposals		
<u>Est. Ridership</u>	<u>Rate</u>	<u>Total</u>
First Transit		
Year 1	94,872	\$51.72
		\$ 4,906,780
Year 2	97,436	\$53.27
		\$ 5,190,416
Year 3	99,487	\$54.87
		<u>\$ 5,458,852</u>
Sub-Total		\$15,556,048
Payment for Start-Up Costs		<u>\$ 225,000</u>
First Transit Total		\$15,781,048
Transit Express		
Year 1	153,333	\$50.87
		\$ 7,800,050
Year 2	156,410	\$52.65
		\$ 8,234,987
Year 3	159,538	\$54.49
		<u>\$ 8,693,226</u>
Transit Express Total		\$24,728,263
Grand Total		\$40,509,311
Total Cost of Presumptive Winning Proposal		\$31,916,634
Difference (Cost of Emergency Contract Extensions)		\$8,592,677
Source: MTS records.		

However, as previously noted, Transit Plus paratransit van ridership has declined significantly in recent years (see **Background** section of this report). Therefore, MTS has recently projected lower ridership totals for paratransit van service during the next three years. These new estimates, which assume no change in annual ridership during the period, reduces the estimates upon which the 2012 proposals were made by 6.2% for the first year of the contract, by 8.3% in the second year, and by 10.1% for the third year. We reviewed monthly ridership data for 2011, 2012 and the first three months of 2013

and believe MTS' revised projections are reasonable and based on actual ridership patterns.

Using the revised ridership figures, the estimated cost of the emergency contract extensions is reduced from \$8.6 million to \$7.9 million dollars. This information is presented in **Table 3**.

Table 3			
Estimated Cost of Paratransit Van Service			
Emergency Contract Extensions Using			
Updated Ridership Estimates			
	<u>Est. Ridership</u>	<u>Rate</u>	<u>Total</u>
First Transit			
Year 1	90,154	\$51.72	\$ 4,662,765
Year 2	90,154	\$53.27	\$ 4,802,504
Year 3	90,154	\$54.87	<u>\$ 4,946,750</u>
Sub-Total			\$14,412,019
Payment for Start-Up Costs			<u>\$ 225,000</u>
First Transit Total			\$14,637,019
Transit Express			
Year 1	142,714	\$50.87	\$ 7,259,861
Year 2	142,714	\$52.65	\$ 7,513,892
Year 3	142,714	\$54.49	<u>\$ 7,776,486</u>
Transit Express Total			\$22,550,239
Grand Total			\$37,187,258
Total Cost of Presumptive Winning Proposal*			\$29,283,151
Difference (Cost of Emergency Contract Extensions)			\$7,904,134
* Adjusted for revised ridership estimates.			
Source: MTS records.			

We estimate the cost of the two 3-year emergency contract extensions for paratransit van services cost between \$7.9 million and \$8.6 million, depending on actual ridership during the contract period.

Therefore, had there been no delays in the procurement process and any appeals were denied, we estimate the cost of the two 3-year emergency contract extensions for paratransit van services cost between \$7.9 million and \$8.6 million, depending on actual ridership during the contract period. Given recent trends, it is more likely that the figure will be closer to the lower value of the range than the higher. However, it should be noted that at the time the decision was made to execute the emergency contract

extensions, the best information available indicated there would be a resulting cost of \$8.6 million.

One further note regarding the calculation of the cost of the emergency contract extensions. The presumptive winning proposal was made on the basis of one provider serving the entire County, while the emergency contract extensions were executed with two providers, each serving separate sections covering roughly half of the County.

Section 3: Key Factors Leading to Emergency Contract Extensions

Five key factors contributed to MTS management abandoning its competitive proposal process for paratransit van service in 2012.

Five key factors contributed to MTS management abandoning its competitive proposal process for paratransit van service in 2012 and instead negotiating emergency contract extensions with its existing vendors. While none of the five factors, in isolation, would have triggered that outcome, their cumulative effect resulted in MTS management concluding that the contract extensions were its only option to avoid interruption in critical services to a dependent clientele.

Based on our review of documents and interviews with individuals involved in the sequence of events highlighted in **Section 1** of this report, the five key factors resulting in the emergency contract extensions were:

- An initial delay of 23 days in the development of specifications by MTS' Transit Plus staff for inclusion in the RFP solicitation.
- A subsequent delay of 22 days to determine a Disadvantaged Business Enterprise (DBE) goal for the eventual contract award, to be included in the RFP solicitation. Milwaukee County's Office of Community Business Development Partners (CBDP) is responsible for the establishment of contract goals for all County contracts, including those awarded by MTS.
- An additional delay of 22 days while MTS awaited written guidance from the Federal Transit Authority (FTA) regarding a procedural matter. The actual time elapsed from the request for guidance until the written response arrived was 52 days.
- A 10-day delay from the initial date scheduled for the Appeals Committee hearing on Transit Express' appeal of the intended contract award. The delay was to accommodate advocates for persons with disabilities' desire to attend and have input at the hearing.
- Lack of a continuation clause in the existing paratransit van service contracts and an unwillingness on the part of both existing vendors at different points in the process to accommodate MTS requests for short term contract extensions at reasonable terms.

The MTS Director of Materials Management was expecting to have the specifications for the 2012 van services RFP prepared by the beginning of April.

Proposal Criteria Delay

According to the MTS Director of Materials Management, he was expecting the MTS Transit Plus Director to have the specifications for the 2012 van services RFP prepared by the beginning of April. The Director of Materials Management received the specifications on April 25. The Director of Materials Management attributed the delay to general workload issues and the fact that a specifications writer position was eliminated from MTS years ago, leaving operations staff the responsibility to develop the specifications. After minor edits and the addition of boilerplate language required for all MTS contract awards, on May 2, he forwarded the specifications to MCDOT with a request for approval and establishment of a DBE goal.

The earliest date MTS could have assumed clearance for issuance of the RFP was a full 23 calendar days past the issuance date for the previous Transit Plus van service RFP solicitation in 2007.

According to the MTS management and operations contract, the MCDOT Contract Administrator (Director of Operations) is contractually obligated to review RFPs in excess of \$50,000 in advance of issuance, and to "...provide input with respect thereto within five (5) business days following its receipt of a complete information package." Therefore, assuming the RFP information package sent to MCDOT by MTS without a DBE goal on May 2, was considered complete, the earliest date MTS could have assumed clearance for issuance of the RFP was May 9. This is a full 23 calendar days past the April 16 issuance date for the previous Transit Plus van service RFP solicitation in 2007.

DBE Goal Delay

The CBDP Office reports directly to the Chairwoman of the Milwaukee County Board of Supervisors, while the Director of MCDOT is reports directly to the Milwaukee County Executive. The MCDOT Director delegates the MTS Contract Administrator oversight function to the MCDOT Director of Operations. According to the Director of Operations, he facilitates exchanges between MTS and the CBDP Office on any larger problematic issues, but that there is a direct line of communication between MTS and CBDP staff on a day-to-day basis.

The MTS Director of Materials Management stated that, prior to 2012, he would deal directly with the former MCDOT Manager of Transportation Planning, who would work directly with CBDP staff and facilitate a quick turnaround in the establishment of DBE goals. After the retirement of that individual in December 2011, however, the position was abolished.

An April 30 email correspondence string reflects CBDP staff's frustration with an inability to obtain information it deemed necessary to establish DBE goals.

An April 30 email correspondence string (see **Timeline**, page 14) between CBDP staff and management, the MCDOT Director of Operations and MTS management reflects CBDP staff's frustration with an inability to obtain information it deemed necessary to establish DBE goals for several MTS projects. According to the MCDOT Director of Operations, this was reflective of FTA guidance that a more rigorous effort should be undertaken in the establishment of DBE goals for federally-funded projects.

In his email transmission to the MTS Director of Materials Management and MTS Director of Administration on April 30, the MCDOT Director of Operations instructs MTS to provide any planning documentation available on the development of RFP specifications and, if none exist, suggests a meeting with CBDP staff may be necessary to explain MTS' process for developing specifications.

Despite this general instruction pertaining to several pending RFP solicitations, there was a 22 day delay between the date MTS forwarded its RFP specifications to the MCDOT Director of Operations, requesting establishment of a DBE goal and approval to proceed, and the date MTS provided the information the CBDP Office deemed necessary to establish a contract goal. According to the CBDP Contract Compliance Manager, who was involved in this project, he had no interaction with MTS staff during this time period. He indicated that the MTS request was "on the desk" of the former CBDP Director beginning on May 2. On May 22, the former CBDP Director emailed the MCDOT

Director of Operations, copying the MTS Managing Director, reiterating the need for additional information from MTS. That same evening, MTS Managing Director instructed the MTS Director of Materials Management and MTS Director of Administration to provide any information necessary for the establishment of the DBE goal.

The MTS Director of Materials Management noted that the information requested by the CBDP Office did not seem relevant to the RFP solicitations for which DBE goals were being requested.

The previous day, on May 21, the MTS Director of Administration had already emailed, to the MCDOT Director of Operations, documentation that the CBDP Office had previously requested, but made special note of the fact that the MTS procurement process would be followed. This was an apparent reference to the fact that the CBDP Office was requesting that MTS complete either a professional service or construction contract standard form. In an interview, the MTS Director of Materials Management noted that the information requested by the CBDP Office did not seem relevant to the RFP solicitations for which DBE goals were being requested.

On May 23, the MCDOT Director of Operations forwarded the, information MTS provided to the CBDP Office. The following day, May 24, the MTS Director of Administration sends an email to the MCDOT Director of Operations correcting an error contained in his previous transmission. The MCDOT Director of Operations forwards this corrected information to the CBDP Office and a DBE goal was established seven days after that.

On July 20, the former CBDP Director was suspended for unrelated matters and has subsequently been replaced. We did not attempt to contact the former CBDP Director for additional clarification on the delay. The current CBDP Director has made a verbal commitment to MTS to turnaround requests for establishment of DBE goals within three business days.

An additional delay of 22 days awaiting FTA written guidance on a procedural matter became critical.

FTA Written Guidance Delay

With the initial 23-day delay in MTS' development of the RFP specifications and the subsequent delay of 22 days in the establishment of a DBE goal, an additional delay of 22 days awaiting FTA written guidance on a procedural matter became critical. The delay stemmed from separate errors relating to Buy America compliance certifications included as part of the competitive proposals submitted by two vendors.

RFP proposals were due on July 20. Four proposals were received. The RFP required the submission of two separate Buy America certifications; one for rolling stock and one for steel, iron or manufactured products. One of the vendors submitted certifications with signatures attesting to both compliance and non-compliance with both requirements. The other vendor submitted a signed certification attesting to compliance with the rolling stock requirement, but did not include a certification of compliance for the steel, iron or manufactured goods requirement.

In both instances, the errors were discovered by the MTS Director of Materials Management during a review of proposals for responsiveness. In both instances, the vendors were contacted for clarification and in both instances, corrections were made to indicate compliance with both certification requirements.

On July 27, MTS management notified MCDOT of the Buy America errors. The MTS Director of Materials Management reviewed Best Practices guidance on the FTA website and indicated that for contracts awarded on a sealed bid basis, the Buy America errors would disqualify the bids. However, for contracts awarded on a competitive proposal basis, the errors could be corrected in a subsequent revised best and final offer so long as all vendors were provided the same opportunity to submit revised best and final offer proposals. The MTS Director of Materials Management identified a 2003 court case on the

Interviews yielded conflicting statements regarding upon whose judgment written guidance from the FTA was sought.

FTA website, Siemens Transportation, affirming that course of action.

Interviews yielded conflicting statements regarding upon whose judgment written guidance from the FTA was sought. According to the MTS Director of Materials Management, the MCDOT Director of Operations and MCDOT Transportation Business Manager insisted on receiving written guidance from the FTA. According to the MCDOT Director of Operations, the MTS Director of Materials Management advised that written guidance from the FTA should be obtained for his comfort level. The MCDOT Director of Operations said he relied on the MTS Director of Materials Management's expertise regarding that issue. He said he requested that the MTS Director of Materials Management draft a letter laying out the Buy America procedural issue and on July 30, the MCDOT Director of Operations sent a letter under MCDOT letterhead to the FTA seeking written guidance. Both parties agreed that there was no concern that a response would significantly delay the process.

The RFP process continued, with presentations and discussions with proposers, originally scheduled for the last two weeks in July, conducted during August 1-3. Final and best offers were required by August 8. On August 6, the FTA Office of Program Management and Oversight emailed several questions to the MTS Director of Materials Management, who responded that same day.

During the period August 16-29, an Evaluation Committee convened to review proposals, assign technical scores, consider price offers and determine a Best Value vendor for contract award. The five-member Evaluation Committee was composed of four representatives from MTS (including three from Transit Plus), and one representative from the Milwaukee County Office for Persons with Disabilities. The Evaluation Committee determined that First Transit's proposal for a single service area

comprising the entire County was the Best Value. According to the MTS Director of Materials Management, the members of the Evaluation Committee had other job duties and at the time, he felt that if a Notice of Intent to Award letter was mailed by the end of August, there would be sufficient time to allow for a protest, appeal, resolution of appeal and contract award, while still providing the winning proposer 30 days preparation for the November 1 contract start date.

From the July 30 date of the request until the September 20 response, it took the FTA a total of 52 days to confirm the MTS Director of Materials Management's initial conclusion.

Upon receiving the determination of the Evaluation Committee on August 29, the MTS Director of Materials Management emailed the FTA asking for an update and if any additional information was required for a response to the July 30 letter requesting administrative guidance. The FTA responded that no additional information was necessary and that the matter was still under review. It is from this point on August 29 until the FTA written guidance is provided on September 20 that 22 days are lost to the decision to seek the FTA approval. From the July 30 date of the request until the September 20 response, it took the FTA a total of 52 days to confirm the MTS Director of Materials Management's initial conclusion that the FTA regulations permitted proposers to submit corrected Buy America certifications with their Best and Final offers.

Appeals Hearing Delay

After receiving the Notice of Intent to Award letter announcing MTS' intention to award First Transit a contract for the entire County, Transit Express filed a timely protest received by MTS on September 25. In accordance with MTS procurement procedure, Transit Express filed the five-point protest with the MTS Director of Materials Management. Two of the points were procedural, while three of the points related to alleged misrepresentations on the part of First Transit.

The following day, September 26, the MTS Director of Materials Management reviewed and responded to each protest issue, and

denied the protest in its entirety. On October 2, Transit Express filed a formal appeal of the protest denial. A three-member Appeals Committee was formed by MTS, consisting of two MTS managers and one MCDOT manager. An Appeals Hearing was scheduled for October 9.

At two points during this process to date, MTS reached out to both vendors requesting two-month extensions of their existing contracts to ensure continuation of service to clients.

At two points during this process to date, on September 19 (the day before the FTA written guidance letter arrives and, consequently, the day before the Notice of Intent to Award letter is mailed by MTS), and on September 28, MTS reached out to both First Transit and Transit Express requesting that two-month extensions of their existing contracts at their current terms be executed to ensure continuation of service to clients.

In the first instance, the extensions were requested due to delays in the procurement process attributed by MTS as due to awaiting FTA guidance. In that instance, First Transit agreed to extend service for two months within its service area under existing contract terms, but Transit Express made no such commitment.

In the second instance, the request was made to accommodate resolution of the Transit Express protest and anticipated formal appeal. In that instance, MTS was unsuccessful in getting the cooperation of either vendor to extend service under current terms on a short-term basis.

Based on Transit Express' staunch position that discussion of a contract extension focus on a three-year commitment, MTS focused its efforts on negotiating some type of 'bridge' agreement for the entire County that would permit full resolution of Transit Express' appeal, and culminate in the awarding of a contract to First Transit under the terms of its competitively bid proposal of August 8. While actual negotiations took place between legal counsel representing MTS and First Transit, respectively, email correspondence between the MTS Managing Director and the MCDOT Director of Operations reflect virtually

around-the-clock negotiations during October 9-11. At 12:50 pm on October 11, the MTS Managing Director emails the MCDOT Director of Operations that he is close to an agreement with First Transit on a one-year emergency extension for the entire County with some terms favorable to the vendor to allow for an expedited start-up, but with the ability for MTS to terminate the extension with six months' notice to award a new contract per First Transit's August 8 proposal, assuming resolution of the Transit Express appeal. The MTS Managing Director expressed confidence that a deal would be struck with First Transit later that day. A copy of MTS' proposed offer for the extension was attached to the email.

Awarding a new contract to First Transit under terms that were in any way modified from its August 8 proposal would invalidate the procurement process and would not stand up on appeal.

However, First Transit countered soon after with terms that changed its August 8 proposal, creating additional terms more favorable to First Transit. The MTS Managing Director and MTS Director of Materials Management correctly point out that while temporarily extending more favorable terms to First Transit under a short-term emergency extension would be defensible, awarding a subsequent contract to First Transit under terms that were in any way modified from its August 8 proposal would invalidate the procurement process and would not stand up on appeal.

Given these circumstances, the MTS Managing Director changed his focus and negotiated the two three-year emergency extensions with First Transit and Transit Express, respectively. Tentative terms were reached and on the morning of October 12, MTS management met with MCDOT management and concurrence was reached that terms of the three-year extensions should be finalized and executed. With a series of emails and draft document attachments, MTS management met its contractual obligation to report to the MCDOT Director of Operations within 48 hours "...written detail of the extent of the emergency and why the necessity for the purchase was needed."

It appears counter-productive for MTS to accommodate requests for a delay in the Appeals Hearing.

Based on these email exchanges and interviews, it is clear that while MTS management was hopeful as late as October 11 that some type of agreement could be reached with First Transit to continue service to the entire County beginning November 1, time was of the essence and each passing day reduced the chance of guaranteeing uninterrupted service. Given that reality, it appears counter-productive for MTS to accommodate the wishes of advocates for persons with disabilities for a delay in the Appeals Hearing, initially scheduled for October 9, so that they could have adequate notice to provide input at the hearing. MTS management noted that a large number of calls were received from multiple individuals wishing to express their concerns and requesting a delay. MTS management also noted it is uncertain as to whether or not allowing public input at a contract award appeals hearing is legally required.

While the additional delay of 10 days may not have made a difference in the ultimate outcome, proceeding with the Appeals Hearing as originally scheduled may have brought the Transit Express appeal to a conclusion in time to change the dynamics of the First Transit negotiations.

It should be noted that, had the Appeals Committee upheld the denial of Transit Express' protest, Transit Express may have been able to appeal that decision to the FTA. However, the FTA limits its reviews of local protests to whether or not the local entity has written appeals procedures, and whether those procedures were followed, unless a "federal issue" is involved. According to information provided on an FTA Q&A document posted on its website:

Please note that FTA jurisdiction over bid protests is limited to allegations that the grantee does not have protest procedures, or has not complied with its protest procedures, or has not reviewed the protest when presented an opportunity to do so. In addition FTA will not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern. Examples of "Federal

concerns” include, but are not limited to, situations “where a special Federal interest is declared because of program management concerns, possible mismanagement, impropriety, waste, or fraud.”

To clarify MTS’ legal responsibilities throughout a contract award appeals process, we recommend MCDOT management:

1. *Work with MTS to obtain guidance from the Milwaukee County Corporation Counsel regarding all aspects of its appeals process, including appropriate criteria for allowing public input.*

Lack of a Service Continuation Contract Provision and Level of Current Van Service Provider Cooperation

Both providers took advantage of an opportunity created by the apparent losing proposer to obtain terms of contracts more favorable than the ones proposed in their April 8 offers.

Lacking a contract provision requiring that van service providers continue service under existing terms until a subsequent contract is awarded, each day within the delays described in this report pushed MTS closer to a point at which it had little negotiating leverage to counter provider demands. Bluntly said, both providers took advantage of an opportunity created by the apparent losing proposer to obtain terms of contracts more favorable than the ones proposed in their August 8 offers. In their respective three-year emergency extensions:

Transit Express

- Locks in the rates submitted in its losing proposal for the northern section of Milwaukee County.
- Includes a 3.5% annual increase in rates each year of the contract extension, which was also consistent with Transit Express’ losing proposal.
- MCTS’s ability to terminate the contract extension is limited to any event by which the FTA restricts or eliminates funding to MCTS for the paratransit services included within the emergency agreement.

First Transit

- Locks in rates 10.5%, 11.5% and 12.2% higher than its August 8 proposal for the southern section of Milwaukee County for years one, two and three of the contract extension, respectively.

- Received a liquidated damages clause of \$150,000 for termination for any reason other than default.
- Received payment of \$225,000 from MTS for “start-up bid and protest costs” incurred. No supporting documentation was required or requested for this payment.

To help ensure continuation of service in the event of delays in future contract awards, we recommend MCDOT management:

2. *Work with MTS to include continuation of service provisions in paratransit service contracts that ensure no interruption in service before subsequent contracts are awarded.*

Technical Scoring Issue

During our review of the Evaluation Committee’s technical scoring, and during an interview with the MTS Director of Materials Management, it was brought to our attention that the highest and lowest scores assigned within each set of criteria by the five Evaluation Committee members was discarded in the calculation of total technical scores. The remaining three scores were averaged for each category and summed for a total technical score for each proposal. Without commenting on the wisdom of this protocol, we noted that it is not prescribed in MTS’ procurement procedures. According to the MTS Director of Materials Management, the practice dates back to at least 2003 and was upheld as proper under a legal challenge at that time.

We recalculated the technical scores averaging all the scores of all five members, including the high and low scores in each category. Our recalculation resulted in no changes in the ranking of the proposals.

To prevent future potential challenges for failure to follow written procedures regarding the calculation of technical scores, we recommend that MCDOT management:

3. *Work with MTS management to codify its scoring protocol in its procurement procedures.*

Conclusions and Recommendations

Our review of the events leading to the issuance of the two three-year emergency contracts for paratransit van services and discussions with principal players suggests the need for improved clarity in the lines of accountability for management of the Milwaukee County Transit System. Specific accountabilities, lines of authority should be clearly delineated between the Milwaukee County Department of Transportation and Milwaukee Transport Services, Inc. regarding working relationships with the Federal Transit Administration and internal County departments such as the Office of Community Business Development Partners.

Specifically, MCDOT management should ensure that MTS management:

4. *Establish a suitable timeframe for procurements that include hard internal deadlines, formal agreements for turnaround times on inter-agency interactions, and ample cushion for unforeseen delays.*
5. *Establish formal protocols for notification of the MCDOT Contract Administrator when above deadlines are missed.*
6. *Limit emergency contracts/extensions to one year.*
7. *Require formal written notification of the County Executive and County Board Chair within 48 hours of any emergency contract/extensions with a detailed explanation of the nature and extend of the emergency, as well as the fiscal impact of the action taken.*

Additional Considerations

Questions have been raised regarding the ability of MTS to terminate the emergency contract provisions and re-bid the paratransit van service contract. Our reading of the contract language is that there are limited options for terminating the emergency contract extensions. MTS' ability to terminate the Transit Express contract is restricted to a limitation or elimination of Federal funding. The contract language for First Transit provides for termination, but includes a liquidated damages

There are limited options for terminating the emergency contract extensions.

provision of \$150,000 if the termination is for any reason other than default. This amount is in addition to unspecified "...contract close-out costs, and profit on work performed up to the time of termination." That language in the 2007 contract applies specifically to termination for convenience.

Therefore, MCDOT could attempt to persuade the FTA to limit or eliminate Federal funding for the Transit Express contract. Toward the end of our review we became aware of monitoring efforts by the CBDP Office that suggests both Transit Express and First Transit are under-achieving their contractual DBE goals (see **Exhibit 4**), which could potentially result in the termination of their respective agreements.

Further, MTS could pay the liquidated damages of \$150,000 plus the unspecified 2007 close-out costs and terminate the First Transit contract.

Finally, the contracts in question are between MTS and the van service providers. If MTS were to be replaced with another contractor, it is a legal question as to whether or not the contracts are assignable to the new contractor.

Pursuing any termination options begs the question: How could a continuation of paratransit van service to Milwaukee County's persons with disabilities be guaranteed?

However, since the emergency contract extensions do not include a continuation of services clause, pursuing any of the above options begs the question: How could a continuation of paratransit van service to Milwaukee County's persons with disabilities be guaranteed?

To exhaust all possibilities for recovering some of the negative fiscal implications of the emergency contract extensions without disrupting paratransit van services, we recommend MCDOT management:

8. *Work with Corporation Counsel and representatives of the Federal Transit Administration to review all options for terminating the emergency contract extensions for*

paratransit van service without disrupting the service for Milwaukee County's Transit Plus clients.

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Audit Scope

The objectives of this audit was/were to provide a detailed analysis of the following:

- the Request for Proposal (RFP) process;
- the responses to the RFP from vendors;
- the awarding of the emergency contracts;
- the review panel;
- the inquiry to the Federal Transit Administration;
- a calculation of the estimated fiscal impact to Milwaukee County over the duration of the emergency contracts.

Additional objectives included identifying and providing policy makers a better understanding of the facts of the procurement, including the related financial implications, and any recommendations to improve the current process.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review to the areas specified in this Scope Section. During the course of the audit, we:

- Reviewed Transit Plus program operating budget information from 2010—2012.
- Interviewed management from MTS, MCDOT, CBDP, and members of the RFP Evaluation Committee.
- Obtained and reviewed documents including email correspondence relevant to this audit scope.
- Obtained and reviewed Transit Plus ridership, client, and cost data.
- Obtained the total annual payments made to current paratransit van service providers covering 2010–2012 from MTS.
- Reviewed MTS policy and procedures and Milwaukee County ordinances related to procurements.
- Reviewed the 2007 and the 2012 RFPs for paratransit van service and the subsequent proposals, protest and appeal, and the current three-year emergency contracts.
- Reviewed the contracts both for the 2007 RFP and the three-year emergency contract extensions.

- Reviewed the MTS Management Operations Agreement between MTS, Inc. and Milwaukee County.
- Reviewed FTA guidelines related to paratransit services.
- Conducted internet research related to Paratransit operations and MTS providers.
- Determined the fiscal impact of the three-year emergency contract extension agreements compared to bidders' proposals.
- Addressed questions regarding the ability of MTS to terminate the emergency contract extensions and re-bid the paratransit van service contract.

Competitive Contract Negotiations

PP-070

Date Issued: 02/10/2012

Date Revised: 06/07/2012

I. PURPOSE

To provide guidelines to be used in all contract negotiations.

II. SCOPE

These procedures applies to all employees.

III. GENERAL

Negotiation is a procedure that includes the receipt of proposals from offerors, permits bargaining, and usually affords an opportunity to revise their offers before award of a contract. Bargaining, in the sense of discussion, persuasion, alteration of initial assumptions and positions, and give-and-take, may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. Negotiations are appropriate if one (1) or all of the following conditions exist:

1. Adequate specifications are not available or would be too expensive to develop.
2. Discussions with the offerors are required.
3. Evaluation and award factors include criterion other than price or price related factors.
4. Other than a firm fixed price contract is to be awarded.
5. The contract is one which may result in revenue being generated for Milwaukee Transport Services, Inc., or one in which Milwaukee Transport is granting a right or privilege to a vendor which may generate revenue for said vendor or for Milwaukee Transport, or both.

Independent Cost Estimate (ICE)

Before receiving proposals an Independent Cost Estimate must be obtained and included in the contract file.

A. **Converting from Sealed Bidding to Negotiation Procedures**

When the Director of Materials Management has determined that a sealed bid is to be canceled and that use of negotiations is appropriate to complete the acquisition, the purchasing administrator may negotiate and make award without issuing a new solicitation subject to the following conditions:

1. Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by the purchasing administrator to each responsive,

- responsible bidder that submitted a bid in response to the invitation for bids;
2. The negotiated price is the lowest negotiated price offered by any responsible bidder; and
 3. The negotiated price is lower than the lowest rejected bid price of a responsive, responsible bidder that submitted a bid. However, this paragraph (3) does not apply if the invitation was canceled and all bids were rejected.

B. Solicitation and Receipt of Proposals

This section prescribes policies and procedures for preparing and issuing requests for proposals (RFPs) and for receiving proposals.

1. Requests for proposals (RFPs) are used in negotiated acquisitions to communicate county requirements to prospective vendors and to solicit proposals from them. Solicitations shall contain the information necessary to enable prospective vendors to prepare proposals properly. Solicitation provisions and contract clauses may be incorporated into the solicitations and contracts by reference.
2. The purchasing administrator shall furnish identical information concerning a proposed acquisition to all prospective vendors.
3. The purchasing administrator shall solicit proposals only when there is a definite intention to award a contract.
4. A proposal received in response to an RFP is an offer that can be accepted by the county to create a binding contract.
5. Letter RFPs should be as clear and concise as possible, exclude any unnecessary verbiage or notices; and, as a minimum, contain the following:
 - a. RFP number and date.
 - b. Name and address of contracting office.
 - c. Type of contract contemplated.
 - d. Quantity, description, and required delivery for the item.
 - e. Applicable certifications and representations.
 - f. Contract terms and conditions.
 - g. Offer due date.
 - h. Other relevant information; e.g., incentives, variations in delivery schedule, any peculiar or different requirements, cost proposal support and different data requirements.

C. Solicitation Mailing List and Advertising

The Materials Management Department shall establish, maintain, and use lists of potential sources. RFPs shall be solicited from all potential sources. RFPs with an estimated aggregate value in excess of fifty thousand dollars (\$50,000.00) shall be advertised at least once in the officially designated newspaper for procurement notices as least two (2) weeks before the proposal due date, by posting official notice on the Materials Management bid/proposal board for the same period, posting official notice on the Doing Business With Milwaukee County Portal, and submitted to Demandstar for broadcast for the same period. Any response to publicized RFPs shall be honored to the maximum extent practical.

D. Evaluation Factors

RFPs shall identify all evaluation factors and their relative importance. Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitation. Proposals shall be evaluated solely on the factors specified in the solicitation. The factors that will be considered in evaluating proposals shall be tailored to each procurement and include only those factors that will have an impact on the source selection decision. The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of the purchasing administrator. However, price or cost to the county shall be included as an evaluation factor in every source selection. Quality also shall be addressed in every source selection. In evaluation factors, quality may be expressed in terms of technical excellence, management capability, personnel qualifications, prior experience, past performance and schedule compliance. Other relevant factors may also be included.

E. Right to Award Without Negotiations

If so stated in the RFP, the purchasing administrator may make an award on the basis of the original proposals, without negotiation with any offeror. If the purchasing administrator conducts negotiations at all, however, then negotiations must be conducted with all offerors in the competitive range.

F. Pre-proposal Conference

1. A pre-proposal conference may be held to brief prospective offerors after a solicitation has been issued but before offers are submitted. Generally these conferences should be used in complex negotiated procurements to explain or clarify complicated specifications and requirements.
2. The purchasing administrator shall decide if a pre-proposal conference is required and make the necessary arrangements, including the following:
 - a. If notice was not in the solicitation, give all prospective offerors who received the solicitation adequate notice of the time, place, nature, and scope of the conference.

- b. If time allows, request prospective offerors to submit written questions in advance. Prepared answers can then be delivered during the conference.
 - c. Arrange for technical and legal personnel to attend the conference, if appropriate.
 3. The Director of Materials Management or a designated representative shall conduct the pre-proposal conference, furnish all prospective offerors identical information concerning the proposed acquisition, make a complete record of the conference, and promptly furnish a copy of that record to all prospective offerors. Conferees shall be advised that:
 - a. Remarks and explanations at the conference shall not qualify the terms of the solicitation; and
 - b. Terms of the solicitation and specifications remain unchanged unless the solicitation is amended in writing.

G. Receipt of Proposals

The procedures for receipt and handling of proposals in negotiated procurements shall be the same as the receipt and safeguarding of sealed bids. Proposals shall be marked with the date and time of receipt. After receipt, proposals in negotiated procurements shall be safeguarded from unauthorized disclosure.

H. Late Proposals and Modifications

1. When a proposal or modification is received and it is clear from available information that it cannot be considered for award, the purchasing administrator shall promptly notify the offeror that it was received late and will not be considered.
2. Late proposals and modifications that are not considered shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.
3. The Director of Materials Management shall retain complete and sole discretion to waive the requirements of subparagraphs 1 and 2, above, if such waiver is deemed to be in the best interests of the county. Such decision of the Director of Materials Management is not subject to appeal to the Purchasing Appeals Committee..

I. Disclosure and Use of Information Before Award

1. After receipt of proposals, none of the information contained in them or concerning the number or identity of offerors shall be made available to the public or to anyone in county government.

2. During the pre-award or pre-acceptance period of a negotiated procurement, only the Director of Materials Management or designee, and other specifically authorized shall transmit technical or other information and conduct discussions with prospective vendors. Information shall not be furnished to a prospective vendor if, alone or together with other information, it may afford the prospective vendor an advantage over others. However, general information that is not prejudicial to others may be furnished upon request.
3. Prospective vendors may place restrictions on the disclosure and use of data in proposals. The Director of Materials Management shall not exclude proposals from consideration merely because they restrict disclosure and use of data, nor shall they be prejudiced by that restriction. The portions of the proposal that are so restricted (except for information that is also obtained from another source without restriction, or information required to be disclosed to county auditors) shall be used only for evaluation and shall not be disclosed outside Milwaukee Transport Services, Inc., the permission of the prospective vendor.

J. Revised Offers and/or Best and Final Offer

After negotiations are concluded each offeror in the competitive range shall be required to submit a revised offer and/or best and final offer at a uniform cutoff date and time. Revised offers or best and final offers received after the uniform cutoff date and time may be rejected without right of appeal. The Director of Materials Management may, in his or her sole discretion, waive this provision if waiver is deemed to be in the best interests of Milwaukee Transport Services Inc., and such decision is not subject to appeal to the Purchasing Appeals Committee.

K. Responsibility

After receiving proposals, awards must be made only to responsible contractors. Before making awards, EEO certification, past and current performance must be reviewed to confirm the contractor qualifies as responsible. For contracts with a value of \$25,000 or greater, the purchasing agent shall review principals on the Excluded Parties Listing System (EPLS). A screen print of the search results shall be included in the RFP file as noted on the Check List.

The EPLS website is www.epls.gov/epls/search.do?multiName=true

L. Awards

In awarding a contract, price is but one (1) factor to be considered, and the award is not required to be made to the lowest responsive, responsible bidder. Awards shall be made to the responsive, responsible firm whose proposal overall is the most advantageous to Milwaukee Transport Services Inc., as determined in the sole opinion of the Director of Materials Management . Milwaukee Transport Services Inc., reserves the right to reject all proposals if the Director of Materials Management , in his or her sole discretion, determines such rejection to be in the public interest. Such rejection is not subject to appeal to the purchasing standardization committee.

M. Protests to Award

Calculation of time in days and hours shall exclude Saturdays, Sundays, and Major holidays.

1. All unsuccessful offerors shall be notified by fax machine transmission of the pending contract award. Protest to the award must be delivered to the Director of Materials Management within seventy-two (72) hours after receipt of notice. The Director of Materials Management's copy of the fax transmission cover sheet, or the departments fax log, shall be conclusive proof of the time and date of receipt by the offeror.
2. A protest must be in writing and clearly state the reason for it. The Director of Materials Management shall review the protest and notify the protestor of a decision by fax machine transmission within five (5) days. No contract shall be awarded while a protest is pending. A protest that is untimely or fails to clearly state the reason for the protest is invalid. The purchasing administrator's copy of the fax transmission cover sheet, or the departments fax log, shall be conclusive proof of the time and date of receipt by the offeror.
3. The decision of the Director of Materials Management disqualifying the protest for these reasons is final and cannot be appealed.

N. Appeals to Purchasing Appeals Committee

1. Except as provided in sections H(3), K and L(3), protests from decisions of the Director of Materials Management shall be made to the Purchasing Appeals Committee by delivering a written request for appeal hearing both to the Director of Materials Management and the Purchasing Appeals Committee within seventy-two (72) hours after receipt of the Director of Materials Management's decision.
2. The request shall state the grounds upon which the protest is based and shall request an appeal hearing. No contract shall be awarded until final disposition of the protest.
3. The chairman of the purchasing appeals committee shall notify all interested persons of the time and place of the hearing.
4. The purchasing appeals committee shall affirm, reverse or modify the decision of the Director of Materials Management and its decision shall be final.

O. Unsuccessful Offeror Debriefing

Unsuccessful offerors, upon their written request shall be debriefed as soon as possible and furnished the basis for the selection decision and contract award. Debriefings shall focus on aspects of the unsuccessful proposal that could have been

improved and should not make comparisons with the winning proposal. Debriefing shall not reveal the relative merits or technical standing of competitors or the evaluation scoring.

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MILWAUKEE TRANSPORT SERVICES, INC.

Operator of Milwaukee County Transit System
 1942 NORTH 17TH STREET, MILWAUKEE, WI 53205-1697
 Telephone: 414-937-3243 • Fax: 414-344-7080

PURCHASE ORDER

BLANKET REVISED

FOR PAYMENT
 MAIL INVOICES IN DUPLICATE
 TO: ACCOUNTS PAYABLE
 TELEPHONE: 414-343-1707
 FAX: 414-344-4759

VENDOR NUMBER 10639 (414) 847-2740 Fax: (414) 817-9864

PURCHASE ORDER NUMBER

B 15025-0001-0009

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND DELIVERY FORMS

VENDOR FIRSTGROUP AMERICA
 4524 SOUTH 13TH STREET
 MILWAUKEE WI 53221

PAGE: 1

SHIP TO: MILW. TRANSPORT SERVICES, INC.
 1525 W. VINE STREET
 MILWAUKEE WI 53205

Please furnish goods and/or services as specified hereon, subject to the conditions of purchase as described on reverse side.

PO. DATE	PAYMENT TERMS	FOB	FRIGHT TERMS	UNIT COST	
11/01/2007	NET 30	DESTINATION	DELIVERED PRICING		
LINE NO	MTS REFER NO.	QUANTITY	UNIT	VENDOR PART NUMBER/DESCRIPTION	DATE REQUIRED
1	508-02-201	1	JOB	DISABLE TRANSPORT	0.00000 10/31/2012
2				PARATRANSIT SERVICES PER RFP #MM-05-07 AND SPECIFICATION TP-01-03 DATED 4/13/2007 FOR A TERM OF 5 YEARS FOR THE PERIOD FROM NOVEMBER 1, 2007 THROUGH OCTOBER 31, 2012. PRICES SHALL BE FIRM FOR 3 YEARS AS OUTLINED BELOW. PRICING FOR YEARS 4 AND 5 SHALL BE DETERMINED WITH THE CONSUMER PRICE INDEX (CPI) AS A CEILING OR CAP TO INSURE PRICE REASONABLENESS. THE CEILING FOR YEAR FOUR (4) WILL BE CALCULATED FOR NOVEMBER OF 2010 BY ADJUSTING THE COST PER HOUR BY AN AMOUNT EQUIVALENT TO THE CHANGE IN THE U.S. DEPARTMENT OF LABOR'S CONSUMER PRICE INDEX (MIDWEST URBAN - ALL ITEMS - 1982-84=100) BETWEEN THE MONTHS OF MARCH 2009 AND MARCH 2010. THE CEILING FOR YEAR FIVE (5) WILL BE CALCULATED FOR NOVEMBER OF 2011 BY ADJUSTING THE COST PER HOUR BY AN AMOUNT EQUIVALENT TO THE CHANGE IN THE U.S. DEPARTMENT OF LABOR'S CONSUMER PRICE INDEX (MIDWEST URBAN - ALL ITEMS - 1982-84=100) BETWEEN THE MONTHS OF MARCH 2010 AND MARCH 2011. MILWAUKEE TRANSPORT SERVICES (MTS) RESERVES THE UNILATERAL RIGHT TO REQUEST NEW PROPOSALS FOR SERVICES AND AWARD NEW CONTRACTS IF A MUTUALLY AGREEABLE REASONABLE PRICE BASED ON THE CPI AS A CEILING OR A CAP IS NOT REACHED BY MAY 1, 2010 FOR YEAR 4 OR MAY 1, 2011 FOR YEAR 5.	
3				YEAR 1 - HOURLY RATE FOR NOV. 1, 2007 THRU OCT. 31, 2008 = \$44.31/HOUR	
4				YEAR 2 - HOURLY RATE FOR NOV. 1, 2008 THRU OCT. 31, 2009 =	

SPECIAL INSTRUCTION

MTS is an agency of Milwaukee County and is exempt from Wisconsin Sales Tax under Section 77.54 (9a) (b) of the Wisconsin Statutes, and is exempt from Federal Excise Tax, and has been granted Exempt No. 39-73-0429-K. Wisconsin Exempt No. CES0140818.

IT IS A DIRECT CONDITION OF THE TERMS OF THIS CONTRACT THAT IF THERE BE ANY TOXIC SUBSTANCES, MATERIALS, OR INFECTIOUS AGENTS, THE VENDOR SHALL SUPPLY TWO COPIES OF MATERIAL SAFETY DATA SHEETS IN ACCORDANCE WITH WISCONSIN STATUTES, CHAPTER 364, ONE DATA SHEET SHALL BE FURNISHED WITH THE MATERIAL SHIPMENT AND ONE COPY SENT TO MATERIALS MANAGEMENT. NO MATERIAL WILL BE ACCEPTED FOR DELIVERY WITHOUT THE REQUIRED DATA SHEET.

Carol J. Clark
 AUTHORIZED SIGNATURE

PURCHASE ORDER

MILWAUKEE TRANSPORT SERVICES, INC.

Operator of Milwaukee County Transit System
 1942 NORTH 17TH STREET, MILWAUKEE, WI 53205-1697
 Telephone: 414-937-3243 Fax: 414-344-7080

BLANKET
 REVISED

FOR PAYMENT
 MAIL INVOICES IN DUPLICATE
 TO: ACCOUNTS PAYABLE
 TELEPHONE: 414-343-1707
 FAX: 414-344-4759

PURCHASE ORDER NUMBER

B 15025-0001-0009 THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND DELIVERY FORMS

VENDOR NUMBER 18639 (414) 847-2740 Fax: (414) 817-9864

PAGE: 2

VENDOR FIRSTGROUP AMERICA
 4524 SOUTH 13TH STREET
 MILWAUKEE WI 53221

SHIP TO: MILW. TRANSPORT SERVICES, INC.
 1525 W. VINE STREET
 MILWAUKEE WI 53205

Please furnish goods and/or services as specified hereon, subject to the conditions of purchase as described on reverse side.

P.O. DATE		PAYMENT TERMS		F.O.B.		FREIGHT TERMS		UNIT COST	
11/01/2007		NET 30		DESTINATION		DELIVERED PRICING			
LINE NO	MTS REFER NO.	QUANTITY	UNIT	VENDOR PART NUMBER/DESCRIPTION				DATE REQUIRED	
27				\$45.98/HOUR					
28				YEAR 3 - HOURLY RATE FOR NOV. 1, 2009 THRU OCT. 31, 2010 =					
29				\$47.73/HOUR					
30				YEAR 4 - HOURLY RATE FOR NOV. 1, 2010 THRU OCT. 31, 2011 =					
31				\$48.99/HOUR					
32				YEAR 5 - HOURLY RATE FOR NOV. 1, 2011 THRU OCT. 31, 2012 =					
33				\$50.31/HOUR					
34									
35				EMERGENCY EXTENSION PER RFP MM-05-07, SPECIFICATION					
36				TP-01-03 DATED APRIL 13, 2007 AND ATTACHMENT A - EMERGENCY					
37				EXTENSION AGREEMENT FROM NOVEMBER 1, 2012 THRU					
38				OCTOBER 31, 2015.					
39									
40				HOURLY RATES SHALL BE AS FOLLOWS:					
41									
42				FROM NOVEMBER 1, 2012 THRU OCTOBER 31, 2013 = \$51.72/HR.					
43									
44				FROM NOVEMBER 1, 2013 THRU OCTOBER 31, 2014 = \$53.27/HR.					
45									
46				FROM NOVEMBER 1, 2014 THRU OCTOBER 31, 2015 = \$54.87/HR.					

SPECIAL INSTRUCTION EMERGENCY EXTENSION ADDED. 0.00

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IT IS A DIRECT CONDITION OF THE TERMS OF THIS CONTRACT THAT IF THERE BE ANY TOXIC SUBSTANCES, MATERIALS, OR INFECTIOUS AGENTS, THE VENDOR SHALL SUPPLY TWO COPIES OF MATERIAL SAFETY DATA SHEETS IN ACCORDANCE WITH WISCONSIN STATUTES, CHAPTER 364. ONE DATA SHEET SHALL BE FURNISHED WITH THE MATERIAL SHIPMENT AND ONE COPY SENT TO MATERIALS MANAGEMENT. NO MATERIAL WILL BE ACCEPTED FOR DELIVERY WITHOUT THE REQUIRED DATA SHEET.

Carl J. Oswald
 AUTHORIZED SIGNATURE

ATTACHMENT A

**EMERGENCY EXTENSION AGREEMENT BETWEEN FIRST TRANSIT,
INC. AND MILWAUKEE TRANSPORT SERVICES, INC.**

THIS EMERGENCY EXTENSION AGREEMENT ("Emergency Agreement") is made and entered into by and between Milwaukee Transport Services Inc. ("MCTS"), on the one side, and First Transit, Inc., a Delaware corporation ("First Transit"), on the other (collectively the "Contracting Parties").

WHEREAS, MCTS and First Transit entered into Purchase Order Number 15025 pursuant to RFP MM-05-07 and Specification TP-01-03, Dated 04/13/2007, for paratransit services for Area B from November 1, 2007 to October 31, 2012;

WHEREAS, MCTS put out for bid RFP MM-05-12 on or about June 5, 2012;

WHEREAS, MCTS received offers from, amongst other entities, Transit Express Services, Inc., and First Transit, Inc.;

WHEREAS, on or about September 20, 2012, MCTS issued a letter of intent to award RFP MM-05-12 to First Transit, Inc. for areas A and B ("Letter of Intent");

WHEREAS, the Letter of Intent was protested by Transit Express, and, pursuant to the protest appeal procedures of RFP MM-05-12, a hearing was scheduled to be held on October 19, 2012 ("Hearing");

WHEREAS, no award from RFP MM-05-12 would be permitted until after the Hearing providing an insufficient amount of time for any vendor to provide paratransit services to MCTS. A vendor would likely require at least a month to be able to provide paratransit services to MCTS pursuant to RFP MM-05-12;

WHEREAS, Transit Express and First Transit are the two vendors contractually obligated to provide paratransit services to MCTS only until October 31, 2012;

WHEREAS, because no award could be made pursuant to RFP MM-05-12 until after October 31, 2012, and because the current paratransit providers are contractually obligated to provide paratransit services only until October 31, 2012, MCTS sought emergency extension agreements with the current paratransit providers to ensure safe and reliable paratransit services from November 1, 2012 and on;

NOW THEREFORE, in consideration of the terms, provisions, and promises set forth below, the Contracting Parties agree as follows:

1. This is an emergency extension of paratransit services provided pursuant to Purchase Order Number 15025 RFP MM-05-7 and Specification TP-01-03 dated 4/13/2007 (the "2007 Contract"). This Emergency Agreement incorporates all of the terms, rights and obligations of the 2007 Contract as if fully set forth herein. To the extent that any of the terms of this Emergency Agreement conflict with the terms, rights, or obligations of the 2007 Contract, this Emergency Agreement shall control.

2. The term of this Emergency Agreement shall be three (3) years commencing on November 1, 2012 and ending on October 31, 2015.

3. From November 1, 2012, until October 31, 2013, the Cost per Service Hour will be \$51.72 per hour which is last year's rate increased by the change in the U.S. Department of Labor's Consumer Price Index (Midwest urban - All Items - 1982-84=100) between the months of March 2011 and March 2012. First Transit retains all fares in addition to receiving the above noted hourly rate.

4. From November 1, 2013, until October 31, 2014, the Cost per Service Hour will be \$53.27 per hour which is a three percent (3%) increase from the previous year. First Transit retains all fares in addition to receiving the above noted hourly rate.

5. From November 1, 2014, until October 31, 2015, the Cost per Service Hour will be \$54.87 per hour which is a three percent (3%) increase from the previous year. First Transit retains all fares in addition to receiving the above noted hourly rate.

6. If MCTS should cancel this Agreement for any reason other than default of First Transit before October 31, 2015, MCTS will owe liquidated damages to First Transit for early cancellation in the amount of one hundred fifty thousand dollars (\$150,000). This liquidated damages payment is in addition to termination costs including close-out costs and profit payable to First Transit under the 2007 Contract. In the event of default, MCTS will provide notice of default to First Transit and a thirty (30) day period within which to cure the default.

7. The Parties acknowledge that this Emergency Agreement is a joint product and shall not be construed against either party on grounds of drafting.

8. This Emergency Agreement may not be amended except by a written amendment signed by all of the Parties.

9. The validity, performance, and enforcement of this Emergency Agreement shall be governed by the laws of the State of Wisconsin and any suit brought thereon shall be commenced and remain in the circuit court of Milwaukee County Wisconsin.

10. This Emergency Agreement may be executed in counterparts, each of which when so executed shall be an original, but all such counterparts together constitute but one and the same instrument. A signed copy of this Emergency Agreement transmitted by facsimile or electronic means shall be as effective as an original.

MILWAUKEE TRANSPORT SERVICES, INC.

By: [Signature] 10/18/2012
Date
Its: President

Approved as to form:
[Signature] 10/18/2012
Date
Quarles & Brady LLP

Attorneys for Milwaukee Transport Services, Inc.

FIRST TRANSIT, INC.

[Signature]
By: Brad Thomas 10.17.12
Date
Its: President

Approved as to form:

Date
Nilan, Johnson, Lewis, PA

Attorneys for First Transit, Inc.

MILWAUKEE TRANSPORT SERVICES, INC.

Operator of Milwaukee County Transit System
 1942 NORTH 17TH STREET, MILWAUKEE, WI 53205-1697
 Telephone: 414-937-3243 • Fax: 414-344-7080

PURCHASE ORDER

BLANKET REVISED

FOR PAYMENT
 MAIL INVOICES IN DUPLICATE
 TO: ACCOUNTS PAYABLE
 TELEPHONE: 414-343-1707
 FAX: 414-344-4759

VENDOR NUMBER 20299 (414) 264-7433 Fax: (414) 264-7460

PURCHASE ORDER NUMBER

B 15026-0001-0008

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND DELIVERY FORMS

PAGE: 1

VENDOR TRANSIT EXPRESS SERVICES
 424 WEST CHERRY STREET
 MILWAUKEE WI 53212-3820

SHIP TO: MILW. TRANSPORT SERVICES, INC.
 1525 W. VINE STREET
 MILWAUKEE WI 53205

Please furnish goods and/or services as specified hereon, subject to the conditions of purchase as described on reverse side.

P.O. DATE		PAYMENT TERMS		F.O.B.		FREIGHT TERMS		UNIT COST	
11/01/2007		NET 30		DESTINATION		DELIVERED PRICING			
LINE NO	MTS REFER NO.	QUANTITY	UNIT	VENDOR PART NUMBER/DESCRIPTION				DATE REQUIRE	
1	508-02-201	1	JOB	DISABLE TRANSPORT				0.00000	
2				PARATRANSIT SERVICES PER RFP #MM-05-07 AND SPECIFICATION TP-01-03 DATED 4/13/2007 FOR A TERM OF 5 YEARS FOR THE PERIOD FROM NOVEMBER 1, 2007 THROUGH OCTOBER 31, 2012. PRICES SHALL BE FIRM FOR 3 YEARS AS OUTLINED BELOW. PRICING FOR YEARS 4 AND 5 SHALL BE DETERMINED WITH THE CONSUMER PRICE INDEX (CPI) AS A CEILING OR CAP TO INSURE PRICE REASONABLENESS. THE CEILING FOR YEAR FOUR (4) WILL BE CALCULATED FOR NOVEMBER OF 2010 BY ADJUSTING THE COST PER HOUR BY AN AMOUNT EQUIVALENT TO THE CHANGE IN THE U.S. DEPARTMENT OF LABOR'S CONSUMER PRICE INDEX (MIDWEST URBAN - ALL ITEMS - 1982-84=100) BETWEEN THE MONTHS OF MARCH 2009 AND MARCH 2010. THE CEILING FOR YEAR FIVE (5) WILL BE CALCULATED FOR NOVEMBER OF 2011 BY ADJUSTING THE COST PER HOUR BY AN AMOUNT EQUIVALENT TO THE CHANGE IN THE U.S. DEPARTMENT OF LABOR'S CONSUMER PRICE INDEX (MIDWEST URBAN - ALL ITEMS - 1982-84=100) BETWEEN THE MONTHS OF MARCH 2010 AND MARCH 2011. MILWAUKEE TRANSPORT SERVICES (MTS) RESERVES THE UNILATERAL RIGHT TO REQUEST NEW PROPOSALS FOR SERVICES AND AWARD NEW CONTRACTS IF A MUTUALLY AGREEABLE REASONABLE PRICE BASED ON THE CPI AS A CEILING OR A CAP IS NOT REACH BY MAY 1, 2010 FOR YEAR 4 OR MAY 1, 2011 FOR YEAR 5. YEAR 1 - HOURLY RATE FOR NOV. 1, 2007 THRU OCT. 31, 2008 = \$41.60/HOUR YEAR 2 - HOURLY RATE FOR NOV. 1, 2008 THRU OCT. 31, 2009 =				10/31/2012	
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SPECIAL INSTRUCTION

MTS is an agency of Milwaukee County and is exempt from Wisconsin Sales Tax under Section 77.54 (9a) (b) of the Wisconsin Statutes, and is exempt from Federal Excise Tax, and has been granted Exempt No. 39-73-0429-K. Wisconsin Exempt No. CES0140818.

IT IS A DIRECT CONDITION OF THE TERMS OF THIS CONTRACT THAT IF THERE BE ANY TOXIC SUBSTANCES, MATERIALS, OR INFECTIOUS AGENTS, THE VENDOR SHALL SUPPLY TWO COPIES OF MATERIAL SAFETY DATA SHEETS IN ACCORDANCE WITH WISCONSIN STATUTES, CHAPTER 364. ONE DATA SHEET SHALL BE FURNISHED WITH THE MATERIAL SHIPMENT AND ONE COPY SENT TO MATERIALS MANAGEMENT. NO MATERIAL WILL BE ACCEPTED FOR DELIVERY WITHOUT THE REQUIRED DATA SHEET.

Carol J. Curtis
 AUTHORIZED SIGNATURE

MILWAUKEE TRANSPORT SERVICES, INC.

Operator of Milwaukee County Transit System
 1942 NORTH 17TH STREET, MILWAUKEE, WI 53205-1697
 Telephone: 414-937-3243 • Fax: 414-344-7080

PURCHASE ORDER

BLANKET REVISED

FOR PAYMENT
 MAIL INVOICES IN DUPLICATE
 TO: ACCOUNTS PAYABLE
 TELEPHONE: 414-343-1707
 FAX: 414-344-4759

PURCHASE ORDER NUMBER

B 15026-0001-0008

THIS NUMBER MUST APPEAR ON
 ALL INVOICES, PACKAGES AND
 DELIVERY FORMS

PAGE: 2

VENDOR NUMBER 20299 (414) 264-7433 Fax: (414) 264-7460

VENDOR: TRANSIT EXPRESS SERVICES
 424 WEST CHERRY STREET
 MILWAUKEE WI 53212-3820

SHIP TO: MILW. TRANSPORT SERVICES, INC.
 1525 W. VINE STREET
 MILWAUKEE WI 53205

Please furnish goods and/or services as specified hereon, subject to the conditions of purchase as described on reverse side.

P.O. DATE		PAYMENT TERMS		F.O.B.	FREIGHT TERMS	UNIT COST
11/01/2007		NET 30		DESTINATION	DELIVERED PRICING	DATE REQUIRE
LINE NO.	MTS REFER NO.	QUANTITY	UNIT	VENDOR PART NUMBER/DESCRIPTION		
27				\$43.47/HOUR		
28				YEAR 3 - HOURLY RATE FOR NOV. 1, 2009 THRU OCT. 31, 2010 =		
29				\$44.69/HOUR		
30				YEAR 4 - HOURLY RATE FOR NOV. 1, 2010 THRU OCT. 31, 2011 =		
31				\$45.87/HOUR		
32				YEAR 5 - HOURLY RATE FOR NOV. 1, 2011 THRU OCT. 31, 2012 =		
33				\$47.11/HOUR		
34				EMERGENCY EXTENSION PER RFP MM-05-07, SPECIFICATION TP-01-03		
35				DATED APRIL 13, 20117 AND ATTACHMENT A - EMERGENCY EXTENSION		
36				AGREEMENT FROM NOVEMBER 1, 2012 THRU OCTOBER 31, 2015.		
37				HOURLY RATES SHALL BE AS FOLLOWS:		
38				FROM NOVEMBER 1, 2012 THRU OCTOBER 31, 2013 = \$50.87/HR.		
39				FROM NOVEMBER 1, 2013 THRU OCTOBER 31, 2014 = \$52.65/HR.		
40				FROM NOVEMBER 1, 2014 THRU OCTOBER 31, 2015 = \$54.49/HR.		
41						
42						
43						
44						
45						

SPECIAL INSTRUCTION EMERGENCY EXTENSION ADDED. 0.00

MTS is an agency of Milwaukee County and is exempt from Wisconsin Sales Tax under Section 77.54 (9a) (b) of the Wisconsin Statutes, and is exempt from Federal Excise Tax, and has been granted Exempt No. 39-73-0429-K. Wisconsin Exempt No. CES0140818.

IT IS A DIRECT CONDITION OF THE TERMS OF THIS CONTRACT THAT IF THERE BE ANY TOXIC SUBSTANCES, MATERIALS, OR INFECTIOUS AGENTS, THE VENDOR SHALL SUPPLY TWO COPIES OF MATERIAL SAFETY DATA SHEETS IN ACCORDANCE WITH WISCONSIN STATUTES, CHAPTER 364. ONE DATA SHEET SHALL BE FURNISHED WITH THE MATERIAL SHIPMENT AND ONE COPY SENT TO MATERIALS MANAGEMENT. NO MATERIAL WILL BE ACCEPTED FOR DELIVERY WITHOUT THE REQUIRED DATA SHEET.

Carl J. C...
 AUTHORIZED SIGNATURE

040 12 021 3/10

ATTACHMENT A

**EMERGENCY EXTENSION AGREEMENT
BETWEEN TRANSIT EXPRESS SERVICES, INC. AND MILWAUKEE
TRANSPORT SERVICES, INC.**

THIS EMERGENCY EXTENSION AGREEMENT ("Emergency Agreement") is made and entered into by and between Milwaukee Transport Services Inc. and Milwaukee County Transit System (collectively "MCTS"), on the one side, and Transit Express Services, Inc. ("Transit Express"), on the other (collectively the "Contracting Parties").

WHEREAS, MCTS and Transit Express entered into Purchase Order Number 15026 pursuant to RFP MM-05-07 and Specification TP-01-03, Dated 04/13/2007, for paratransit services for Area A from November 1, 2007 to October 31, 2012;

WHEREAS, MCTS put out for bid RFP MM-05-12 on or about June 5, 2012;

WHEREAS, MCTS received offers from, amongst other entities, Transit Express Services, Inc., and First Transit, Inc. for areas A and B ("First Transit");

WHEREAS, on or about September 20, 2012, MCTS issued a letter of intent to award RFP MM-05-12 to First Transit, Inc. ("Letter of Intent");

WHEREAS, the Letter of Intent was protested by Transit Express, and, pursuant to the protest appeal procedures of RFP MM-05-12, a hearing was scheduled to be held on October 19, 2012 ("Hearing");

WHEREAS, no award from RFP MM-05-12 would be permitted until after the Hearing leaving an insufficient amount of time for any vendor to provide paratransit services to MCTS. A vendor would likely require at least a month to be able to provide paratransit services to MCTS pursuant to RFP MM-05-12;

WHEREAS, Transit Express and First Transit are the two vendors contractually obligated to provide paratransit services to MCTS only until October 31, 2012;

WHEREAS, because no award could be made pursuant to RFP MM-05-12 until after October 31, 2012, and because the current paratransit providers are contractually obligated to provide paratransit services only until October 31, 2012, MCTS sought emergency extension agreements with the current paratransit providers to ensure safe and reliable paratransit services from November 1, 2012 and on;

NOW THEREFORE, in consideration of the terms, provisions, and promises set forth below, the Contracting Parties agree as follows:

1. This is an emergency extension of paratransit services provided pursuant to Purchase Order Number 15026 RFP MM-05-7 and Specification TP-01-03 dated 4/13/2007 (the "2007 Contract"). This Emergency Agreement incorporates all of the terms, rights and obligations of the 2007 Contract as if fully set forth herein. To the extent that any of the terms of this Emergency Agreement conflict with the terms, rights, or obligations of the 2007 Contract, this Emergency Agreement shall control.
2. The term of this Emergency Agreement shall be three (3) years commencing on November 1, 2012 and ending on October 31, 2015.
3. Transit Express shall continue to service Area A only under the same terms and conditions as those contained within the 2007 Contract, except as those provided in this Emergency Agreement.
4. From November 1, 2012, until October 31, 2013, the Cost per Service Hour will be \$50.87 per hour.

5. From November 1, 2013, until October 31, 2014, the Cost per Service Hour will be \$52.65 per hour.

6. From November 1, 2014, until October 31, 2015, the Cost per Service Hour will be \$54.49 per hour.

7. The Parties acknowledge that this Emergency Agreement is a joint product and shall not be construed against either party on grounds of drafting.

8. This Emergency Agreement may not be amended except by a written amendment signed by all of the Parties.

9. The validity, performance, and enforcement of this Emergency Agreement shall be governed by the laws of the State of Wisconsin and any suit brought thereon shall be commenced and remain in the circuit court of Milwaukee County Wisconsin.

10. This Emergency Agreement may be executed in counterparts, each of which when so executed shall be an original, but all such counterparts together constitute but one and the same instrument. A signed copy of this Emergency Agreement transmitted by facsimile or electronic means shall be as effective as an original.

11. MCTS's ability to terminate this emergency extension agreement for convenience pursuant to Paragraph 22 of the 2007 Contract, shall be limited to any event by which the Federal Transit Administration restricts or eliminates funding to MCTS for the paratransit services included within this Emergency Agreement. This paragraph shall not affect MCTS's ability to terminate for default.

MILWAUKEE TRANSPORT SERVICES, INC.

By: Gregory J. Smith Date 10/17/2012
Its: President

Approved as to form:

[Signature] Date 10/17/2012
Quarles & Brady LLP

Attorneys for Milwaukee Transport Services, Inc.

TRANSIT EXPRESS SERVICES, INC.

By: John V. Deherity Date 10/17/2012
Its: John V. Deherity

Approved as to form:

[Signature] Date 10/17/2012
Friebert, Finerty & St. John, S.C.

Attorneys for Transit Express Services, Inc.



Community Business Development Partners
MILWAUKEE COUNTY

MARINA DIMITRIJEVIC • Chairwoman, Milwaukee County Board of Supervisors
NELSON SOLER • Interim Director, Community Business Development Partners

November 12, 2012

John Doherty
Transit Express Services
424 W Cherry St
Milwaukee, WI 53212
414-264-7433 x 232 office
jdoherty@transitexpress.com

**RE: MTS – Disable Transport – 508-02-201
Purchase Order # B 15026-0001-0008**

Dear Contractor:

The Community Business Development Partners department of Milwaukee County (CBDP) monitors the participation of Disadvantaged Business Enterprise (DBE) firms on County projects to ensure compliance with Milwaukee County Code of General Ordinances Chapter 42 and 49 CFR Parts 23 and 26.

Please take the time to review the following highlights of the DBE requirements covering this contract extension, as they may be considerably different from your current industry practices as a prime contractor.

1. The prime shall submit a signed copy of the contract, including all amendments and schedules, with each DBE providing service toward satisfaction of the level of certified participation stated in the contract extension. It is the responsibility of the prime to obtain contracts from all applicable subcontractors for DBEs participating on lower tiers of this contract extension. Contract(s) must be submitted to CBDP within seven (7) days from receipt of *Notice-to-Proceed*, along with a Project Schedule reflecting the services or goods to be supplied by DBEs. Requests for payment will not be processed if these items are not on file with CBDP.
2. All adjustments to pricing affect DBE participation proportionally. As contract prices are adjusted, reciprocal adjustments to DBE participation will be necessary to maintain the level of certified participation stated in the contract extension. If prime fails to achieve and maintain the level of certified participation stated in the contract extension, prime shall provide documentation to CBDP demonstrating that it made good faith efforts in its attempt to meet the stated level of certified participation. The failure of the prime to reflect a good faith effort to achieve and maintain the stated level of certified participation throughout the term of this contract extension shall be considered a material breach of the contract extension and may result in termination of the contract extension.
3. DBEs desiring to further subcontract work on this contract extension are required to request and obtain approval from CBDP prior to subcontracting any portion of their work under this contract extension.
4. The prime shall count only expenditures to DBEs that perform a commercially useful function in the actual work of the contract. The prime shall be credited for fees or commissions charged for assistance in the procurement of materials and supplies, i.e., brokered deals, according to industry practice up to a maximum of 10% of cost. The prime shall also be credited for fees or transportation charges for the delivery of materials or supplies by a DBE to a

MILWAUKEE COUNTY - CITY CAMPUS • 2711 WEST WELLS STREET, 8TH FLOOR, ROOM 830 • MILWAUKEE, WI 53208
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job site, provided Milwaukee County determines the fee(s) as reasonable. The cost of the materials and supplies so brokered will not be credited

5. Prime shall list DBE service(s) and payment amount(s) separately on each request for payment, in addition to submitting a *DBE Utilization Report* (DBE-16) with each payment request. *Contract Close-Out DBE Payment Certification(s)* (DBE-18) for each certified firm must be submitted with the final payment request. Project Manager will reject payment requests if this information is not included in the request.
6. Prime shall pay all subcontractors within seven (7) days of receipt of payment from Milwaukee County.
7. Approval must be obtained from CBDP prior to making any substitution and/or termination action(s). If for any reason the DBE(s) cannot perform, or if a problem related to achieving the stated level of certified participation exists, the prime shall immediately contact CBDP at (414) 278-4747. The prime must submit a written request for substitution and/or termination to its DBE subcontractor specifying the reason(s) for the request, and forward a copy to CBDP. DBE subcontractor shall be afforded 5 business days to respond to the specifics of the request.
8. CBDP shall notify prime in the event that new regulations or ordinances affecting participation are enacted. Following such notification, prime shall initiate all necessary and reasonable steps to achieve and/or maintain compliance with the newly established requirements throughout the remaining term of this contract extension.
9. CBDP reserves the right to conduct compliance reviews and request from any contractors, documentation (i.e., invoices, cancelled checks, etc.) that will substantiate any stated level(s) of certified participation.
10. Milwaukee County does not allow "pass through" practices and will initiate suspension or debarment proceedings under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001 against all persons and firms found to participate in such practices. Milwaukee County will also initiate decertification proceedings against DBEs found to participate in such practices.
11. Failure to comply with these requirements will result in your removal from this project

While we are here to assist with all DBE-related questions and/or issues, these clarifications are necessary in light of the level of certified participation achieved on the original contract to date by Transit Express Services. Through September of 2012, the level of certified participation is 5.14% of the \$50,553,218.83 in contract payments to Transit Express. This figure is \$940,793.35 short of the level committed at contract award. Therefore, Transit Express will need to increase participation of certified firms in order to come into compliance with its contractual assurances.

The performance of Transit Express will be monitored by CBDP throughout the life of this contract extension. CBDP will send notification via email if at any time the certified participation requirements of this contract extension are not met. Transit Express will have 30 calendar days from the date of notification to establish compliance. Failure to correct within this timeframe will result in payment(s) being withheld until certified participation requirements are met. Failure to maintain compliance for any consecutive 90 calendar day period shall be considered a material breach of the contract extension, and may result in termination of this contract extension.

Please direct inquiries concerning this notification to my attention.

Earnestly



Mark Phillips
Contract Compliance Manager, DBE

TRANSIT EXPRESS: DBE AUDIT RESULTS THROUGH SEPTEMBER 2012

Nov. 207 - Sep. 2012	2008	2009	2010	2011	2012	CUM. TOTALS
CONTRACT REVENUE	9,427,056.78	11,353,001.02	11,989,563.35	10,927,576.49	6,856,021.19	\$50,553,218.83
7% DBE GOAL (REV X .07)	659,893.97	794,710.07	839,269.43	764,930.35	479,921.48	3,538,725.32
ABLE ACCESS	172,356.35	366,644.03	442,480.24	340,785.08	112,091.18	1,434,356.88
AMERACARE TRANSPORTS	330,758.42	157,201.30	0.00	0.00	0.00	487,959.72
AT&T OPTIMUM CLEANING	0.00	9,325.00	15,100.00	12,600.00	4,200.00	41,225.00
EATON'S ASPHALT SERVICE	2,880.00	0.00	0.00	0.00	0.00	2,880.00
JF COOK	2,752.95	4,888.59	2,309.21	1,673.50	1,843.15	13,467.40
OASIS COFFEE SERVICE	7,484.72	7,282.13	7,630.69	13,027.58	10,773.90	46,199.02
OIL NETWORK MARKETING	74,048.42	45,440.22	52,885.55	71,964.47	57,581.39	301,920.05
PROTECH AUTO GLASS	6,984.97	12,401.19	9,985.92	11,372.62	12,890.87	53,635.57
TRI-STATE OFFICE PRODUCTS	0.00	0.00	0.00	387.38	34.16	421.54
TROTTER INDUSTRIES	9,600.00	3,000.00	0.00	0.00	0.00	12,600.00
UC CLEAN	0.00	0.00	0.00	0.00	14,500.00	14,500.00
WISCONSIN SECURITY POLICE	46,599.00	51,688.00	46,728.00	43,751.78	0.00	188,766.78
DBE CREDIT	\$653,464.83	\$657,870.46	\$577,119.61	\$495,562.41	\$213,914.65	\$2,597,931.97
SHORTFALL	(\$6,429.14)	(\$136,839.61)	(\$262,149.82)	(\$269,367.94)	(\$266,006.83)	(\$940,793.35)
DBE %	6.93%	5.79%	4.81%	4.53%	3.12%	5.14%

TRANSIT EXPRESS CONTACTS

Mary Smarelli 264-7443 x 201
John Doherty 264-7443 x 232



Community Business Development Partners
MILWAUKEE COUNTY

MARINA DIMITRIJEVIC • Chairwoman, Milwaukee County Board of Supervisors
NELSON SOLER • Interim Director, Community Business Development Partners

November 12, 2012

Stephanie Baker
First Transit
4524 S 13th St
Milwaukee, WI 53221
414-847-2751
stephanie.baker@firstgroup.com

**RE: MTS – Disable Transport – 508-02-201
Purchase Order # B 15025-0001-0009**

Dear Contractor:

The Community Business Development Partners department of Milwaukee County (CBDP) monitors the participation of Disadvantaged Business Enterprise (DBE) firms on County projects to ensure compliance with Milwaukee County Code of General Ordinances Chapter 42 and 49 CFR Parts 23 and 26.

Please take the time to review the following highlights of the DBE requirements covering this contract extension, as they may be considerably different from your current industry practices as a prime contractor.

1. The prime shall submit a signed copy of the contract, including all amendments and schedules, with each DBE providing service toward satisfaction of the level of certified participation stated in the contract extension. It is the responsibility of the prime to obtain contracts from all applicable subcontractors for DBEs participating on lower tiers of this contract extension. Contract(s) must be submitted to CBDP within seven (7) days from receipt of *Notice-to-Proceed*, along with a Project Schedule reflecting the services or goods to be supplied by DBEs. Requests for payment will not be processed if these items are not on file with CBDP.
2. All adjustments to pricing affect DBE participation proportionally. As contract prices are adjusted, reciprocal adjustments to DBE participation will be necessary to maintain the level of certified participation stated in the contract extension. If prime fails to achieve and maintain the level of certified participation stated in the contract extension, prime shall provide documentation to CBDP demonstrating that it made good faith efforts in its attempt to meet the stated level of certified participation. The failure of the prime to reflect a good faith effort to achieve and maintain the stated level of certified participation throughout the term of this contract extension shall be considered a material breach of the contract extension and may result in termination of the contract extension.
3. DBEs desiring to further subcontract work on this contract extension are required to request and obtain approval from CBDP prior to subcontracting any portion of their work under this contract extension.
4. The prime shall count only expenditures to DBEs that perform a commercially useful function in the actual work of the contract. The prime shall be credited for fees or commissions charged for assistance in the procurement of materials and supplies, i.e., brokered deals, according to industry practice up to a maximum of 10% of cost. The prime shall also be credited for fees or transportation charges for the delivery of materials or supplies by a DBE to a

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job site, provided Milwaukee County determines the fee(s) as reasonable. The cost of the materials and supplies so brokered will not be credited.

5. Prime shall list DBE service(s) and payment amount(s) separately on each request for payment, in addition to submitting a *DBE Utilization Report* (DBE-16) with each payment request. *Contract Close-Out DBE Payment Certification(s)* (DBE-18) for each certified firm must be submitted with the final payment request. Project Manager will reject payment requests if this information is not included in the request.
6. Prime shall pay all subcontractors within seven (7) days of receipt of payment from Milwaukee County.
7. Approval must be obtained from CBDP prior to making any substitution and/or termination action(s). If for any reason the DBE(s) cannot perform, or if a problem related to achieving the stated level of certified participation exists, the prime shall immediately contact CBDP at (414) 278-4747. The prime must submit a written request for substitution and/or termination to its DBE subcontractor specifying the reason(s) for the request, and forward a copy to CBDP. DBE subcontractor shall be afforded 5 business days to respond to the specifics of the request.
8. CBDP shall notify prime in the event that new regulations or ordinances affecting participation are enacted. Following such notification, prime shall initiate all necessary and reasonable steps to achieve and/or maintain compliance with the newly established requirements throughout the remaining term of this contract extension.
9. CBDP reserves the right to conduct compliance reviews and request from any contractors, documentation (i.e., invoices, cancelled checks, etc.) that will substantiate any stated level(s) of certified participation.
10. Milwaukee County does not allow "pass through" practices, and will initiate suspension or debarment proceedings under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001 against all persons and firms found to participate in such practices. Milwaukee County will also initiate decertification proceedings against DBEs found to participate in such practices.
11. Failure to comply with these requirements will result in your removal from this project.

While we are here to assist with all DBE-related questions and/or issues, these clarifications are necessary in light of the level of certified participation achieved on the original contract to date by FirstGroup America d/b/a First Transit. Through September of 2012, the level of certified participation is 6.33% of the \$39,974,267.64 in contract payments to First Transit. This figure is \$555,019.15 short of the level committed at original contract award. Therefore, First Transit will need to increase participation of certified firms in order to come into compliance with its contractual assurances.

The performance of First Transit will be monitored by CBDP throughout the life of this contract extension. CBDP will send notification via email if at any time the certified participation requirements of this contract extension are not met. First Transit will have 30 calendar days from the date of notification to establish compliance. Failure to correct within this timeframe will result in payment(s) being withheld until certified participation requirements are met. Failure to maintain compliance for any consecutive 90 calendar day period shall be considered a material breach of the contract extension, and may result in termination of this contract extension.

Please direct inquiries concerning this notification to my attention.

Earnestly,



Mark Phillips
Contract Compliance Manager, DBE

FIRST TRANSIT: DBE AUDIT RESULTS THROUGH SEPTEMBER 2012

Nov 2012 - Sep 2012	2008	2009	2010	2011	2012	CUM. TOTALS
CONTRACT REVENUE	8,712,125.45	9,130,037.17	9,142,828.14	8,228,680.19	4,760,596.69	\$39,974,267.64
7% DBE GOAL (REV X .07)	609,848.78	639,102.60	639,997.97	576,007.61	333,241.77	2,798,198.73
OIL NETWORK (Fuel)	126,240.34	74,543.93	92,468.41	97,095.19	62,726.65	453,074.52
PEOPLE'S TRANSIT	0.00	0.00	0.00	0.00	39,435.50	39,435.50
A-1 TRANSPORT	131,680.38	57,298.27	0.00	0.00	0.00	188,978.65
EXACT TRANSPORT	302,159.55	425,078.38	501,975.52	443,363.99	177,775.28	1,850,352.73
VILAR ARTS (PRINTING)	503.53	410.94	269.82	0.00	0.00	1,184.29
COMMUNITY PEST	637.00	504.00	504.00	868.06	575.00	3,089.06
BELONGER	675.42	406.42	0.00	5,102.56	1,058.56	7,243.96
DAIRYLAND ELECTRIC	4,856.25	1,493.05	10,251.00	8,276.00	3,983.44	28,859.74
DBE CREDIT, REPORTED	\$566,753.48	\$559,734.99	\$605,468.75	\$554,705.80	\$285,555.43	\$2,572,218.45
SHORTFALL, REPORTED	(\$43,095.30)	(\$79,367.61)	(\$34,529.22)	(\$21,301.81)	(\$47,666.34)	(\$225,980.28)
DBE %, REPORTED	6.51%	6.13%	6.62%	6.74%	6.00%	6.43%
DBE CREDIT	\$563,198.55	\$556,593.00	\$601,169.13	\$532,167.66	\$275,415.66	\$2,528,544.00
SHORTFALL	(\$46,650.24)	(\$82,509.60)	(\$38,828.94)	(\$43,839.95)	(\$57,826.11)	(\$555,019.15)
DBE %	6.46%	6.10%	6.58%	6.47%	5.79%	6.33%

OIL NETWORK MARKETING

INVOICE FIGURES	1,226,854.06	714,019.44	881,687.90	745,570.54	566,389.65	4,134,521.59
DBE CREDIT REPORTED	126,240.34	74,543.93	92,468.41	97,095.19	62,726.65	453,074.52
DBE CREDIT	122,685.41	71,401.94	88,168.79	74,557.05	52,586.88	409,400.07
Difference in Reported & Actual	(3,554.93)	(3,141.99)	(4,299.62)	(22,538.13)	(10,139.77)	(43,674.44)

FIRST TRANSIT CONTACTS
 Stephanie Baker
 Morgan McClenden
 414-847-2751
 414-460-3759



COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION

Department of Transportation
Brian Dranzik, Director

DATE: April 15, 2013

TO: Jerome J. Heer, Director of Audits

FROM: Brian Dranzik, Director of Transportation
Lloyd Grant, Managing Director, Milwaukee County Transit System

SUBJECT: Response to the Audit of Emergency Contract Extensions for Paratransit Services Negotiated by Milwaukee Transport Services, Inc. for a 3-Year Period Effective November 1, 2012

The Department of Transportation would like to thank the Milwaukee County Department of Audit for their review of the emergency contract extensions for paratransit services. Staff from the Milwaukee County Transit System and the Department of Transportation agrees that the Department of Audit was professional and respectful in their analysis.

Paratransit services are a vital component of transportation services offered by the Milwaukee County Transit System. Transit Plus strives to ensure that individuals with disabilities who rely on paratransit services for their medical and personal needs are provided quality, reliable and uninterrupted transportation services in a cost effective manner. As the audit states, in 2012, over 459,000 van rides were provided. Providing reliable service to the roughly 3,800 clients that depend on paratransit is something that the Milwaukee County Transit System takes very seriously.

MTS remains disappointed that it was not successful in its efforts to attain short-term extensions of existing paratransit services contracts. While it is highly unusual for all of the factors contributing to the extension to occur, the decision to enter into emergency contract extensions was driven by the need to avoid a situation that put paratransit riders at risk of being without critical service. MTS is taking steps to tighten controls necessary to prevent long delays in the procurement process of this service.

Balancing the need to provide critical services with the fiscal realities that are ever-present is the crux of the issue for the paratransit emergency contract extensions. To that end, the Department of Audit report has identified eight areas in which improvements can be instituted to ensure that service is provided and resources are protected. The Department of Transportation and the Milwaukee County Transit System provide the following response to the individual audit findings:

MCDOT Management:

1. *Work with MTS to obtain guidance from the Milwaukee County Corporation Counsel regarding all aspects of its appeals process, including appropriate criteria for allowing public input.*

The Department of Transportation agrees with this finding. The Director of Transportation will facilitate discussion with MTS and Milwaukee County Corporation Counsel for guidance on all aspects of the appeals process. The Department envisions this would begin in the second quarter of 2013.

2. *Work with MTS to include continuation of service provisions in paratransit service contracts that ensure no interruption in service before subsequent contracts are awarded.*

The Department of Transportation agrees with this finding. The Director of Transportation will work with Milwaukee Transport Services, Inc. (MTS) on proper continuation of service language to be included in future contracts. Implementation of this change will occur with the next paratransit services contract MTS enters into.

3. *Work with MTS management to codify its scoring protocol in its procurement procedures.*

The Department of Transportation agrees with this finding. The Director of Transportation will work with MTS to ensure that the existing scoring protocol is incorporated into procurement procedures. The Department anticipates this adaptation to the procurement procedures can be made by the end of the second quarter of 2013.

4. *Establish a suitable timeframe for procurements that include hard internal deadlines, formal agreements for turnaround times on inter-agency interactions, and ample cushion for unforeseen delays.*

The Department of Transportation agrees with the finding. The Director of Transportation will work with MTS on procedures that can be implemented for future procurements. It should be noted that individual procurements vary depending on the service or product being sought so a one size fits all model would not be appropriate. However, the Department of Transportation and MTS can establish a process that establishes a schedule for each procurement that does identify critical internal deadlines. In addition, schedules will be established to ensure that adequate time is allowed for unforeseen delays.

The Director of Transportation will provide written guidance to MTS regarding the formal agreement for turnaround times on inter-agency interaction process.

5. *Establish formal protocols for notification of the MCDOT Contact Administrator when above deadlines are missed.*

The Department of Transportation agrees with the finding. The Director of Transportation will provide written guidance to MTS regarding formal protocols for notification. The Department would further add that this will include an assessment of fiscal and programmatic impacts due to missed deadlines.

6. *Limit emergency contracts/extensions to one year.*

The Department of Transportation agrees the finding and will ensure that contract language limits emergency contract extensions to one year. Future management contracts will state that emergency contracts are limited to one year.

7. *Require formal written notification of the County Executive and County Board Chair within 48 hours of any emergency contract/extensions with a detailed explanation of the nature and extend of the emergency, as well as the fiscal impact of the action taken.*

The Department of Transportation agrees with the finding. The Director of Transportation will work with MTS to ensure that procedures related to notification are established in MTS' procurement procedures. The Department anticipates this task will be completed within the second quarter of 2013.

8. *Work with Corporation Counsel and representatives of the Federal Transit Administration to review all options for terminating the emergency contract extension for paratransit van service without disrupting the service for Milwaukee County's disabled clientele.*

The Department of Transportation agrees with the finding. The Director of Transportation will work with Corporation Counsel and the Federal Transit Administration to review what options are available to MTS and the County. It is difficult to assess a timeframe for when an outcome may be reached since these discussions may be subject to review by the FTA.



Brian Dranzik
Director of Transportation



Lloyd Grant
Managing Director, MCTS