

**DULUTH TRANSIT AUTHORITY**  
**MANAGEMENT CONTRACTOR OVERSIGHT**  
**PROCEDURE**

XXX, 2019

## Background

The Duluth Transit Authority, (“DTA”) has the power to enter into a management contract for the purpose of operating the public transportation system under Minnesota Statute 458A.25(3). Oversight of the management contract will be performed by the DTA Board of Directors (“Board”), or its designee for some or all of the oversight. Expenses for oversight shall be borne by the DTA.

## Purpose

The purpose of these DTA Management Contractor Oversight Procedures is for the DTA to:

- Ensure that all technical specifications and contract requirements are met by the Management Contractor
- Monitor DTA compliance with FTA requirements for FTA-funded vehicles or facilities that are maintained under contract with the Management Contractor
- Identify performance issues and address them in a timely manner
- Track information regarding performance quality for the purposes of evaluating the Management Contractor for future services

These procedures explain methods of monitoring, reporting, persons responsible, frequency, and expected deliverables associated with managing performance and compliance monitoring systems for rolling stock, ADA paratransit, and fixed route services in accordance with FTA regulations.

## Scope and Applicability

This Procedure applies to monitoring performance and compliance for the following types of projects/programs:

- Rolling Stock
- Construction
- ADA paratransit, and/or fixed route services

The frequency and type of monitoring will be based upon the following: a) size and type of grant or contract, b) associated risks, c) service complexity, and d) FTA requirements.

## References to Legislative and Regulatory Documents

- FTA Circular 4220.1F, “Third Party Contracting Guidance”
- Americans with Disabilities Act and applicable regulations thereto
- 49 CFR Part 18
- 49 CFR Part 26
- 49 CFR Part 37 and 38
- 49 CFR part 571
- 49 CFR Part 663
- 2 CFR Part 200
- FTA Circular 5010.1E
- Amendments or successors to the above

## Definitions

- **Contractor Performance Monitoring:** The process by which the Board oversees and tracks the DTA management contractor (“Management Contractor”) performance is to ensure that the performance and quality assurance standards set forth in the Management Contract are met. Performance measures typically relate to scheduling, timeliness, customer service, and nonconformance. Performance data may also be considered in the evaluation of the Management Contractor for participation in future projects.
- **City of Superior:** The Board will conduct oversight of the DTA consistent with oversight requirements of the City of Superior, and shall provide copies of oversight documentation and findings to the City of Superior at least monthly. The Board will immediately share with the City of Superior any corrective action notifications to the DTA promulgated under this oversight policy.
- **Contractor Compliance Monitoring:** When federally funded services, rolling stock, and facilities are operated by a Management Contractor, they are subject to regular reviews by the Board to ensure compliance with FTA requirements.
- **Reporting**  
Where reporting is required to the Board herein, the DTA Management Contractor shall submit required reports to the Board at least monthly. All oversight activities, findings, corrective action notifications and other actions related to this policy shall be shared with all applicable agencies, including the City of Duluth, City of Superior, the Federal Transit Administration, and upon request to other oversight agencies having authority.

## General Oversight Procedures for Services Providers

- **Title VI Monitoring Procedures**

The Management Contractor must ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participating in, or be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Management Contractor must ensure that Federally supported transit services and related benefits are distributed in an equitable manner. The Management Contractor is responsible for ensuring that the DTA complies with Title VI requirements such as: notifying customers of their rights under Title VI; having Title VI complaint procedures; taking reasonable steps to ensure access to Limited English Proficiency (LEP) populations; and seeking out the viewpoints of minority, low-income and LEP populations when conducting public outreach and involvement activities. The Board shall be informed within two (2) business days of any Title VI complaints received by the DTA Management Contractor.

Key Requirement:

- The DTA Management Contractor managing transportation services with FTA funds must notify the Board within two (2) business days of any complaints received.

- Revisions to Title VI Plans must be approved by resolution of the Board in advance of adopting and implementing revisions. The revised Title VI Plan must be submitted to the City of Superior within thirty (30) days after adoption of the revision. Revisions are required every three years or more frequently as may be required by the FTA.
- Documentation of implemented Language Assistance Plan, including evidence of operational staff training shall be submitted to the Board at least once each year, or more frequently, as may be required by the FTA.
- **Drug and Alcohol**

The FTA requires the DTA to maintain records on Drug and Alcohol Program administration and the test results of individuals for whom it has testing responsibility, including any third-party contractors performing services for the DTA. The Management Contractor must take the following measures to monitor compliance with FTA requirements, 49 CFR Part 655 Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, as amended, and 49 CFR Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs, as amended.

- The Management Contractor will maintain Drug and Alcohol Program records in a secure location at the DTA for a minimum of up to six (6) years.
- The Management Contractor will provide technical assistance in understanding and meeting the program requirements and overseeing the drug and alcohol programs of third-party contractors with safety-sensitive employees.
- The Management Contractor will review third-party contractor programs using standardized compliance checklists to ensure that all required elements are present and that the right type of testing is conducted, the proper forms are used and completed correctly, and records are stored in a secure location and maintained for the required amount of time.
- The Management Contractor will ensure the quality of testing services by establishing a written contract with each testing provider and verifying that the vendor is certified by the Department of Health and Human Services as required.
- The Management Contractor will conduct regular oversight of the Drug and Alcohol Program and provide periodic updates to the Board; will comply with FTA requirements for continuing education and compliance; will investigate reports of flawed procedures; and will document training aimed at correcting any deficiencies.
- **Equal Employment Opportunity (EEO):**

The Management Contractor must ensure that no person shall, on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any DTA project, program, or activity receiving Federal financial assistance under the Federal transit laws. The Management Contractor shall report said compliance to the Board at least semi-annually. The EEO Plan shall be updated every three years in compliance with FTA requirements, and shall be submitted to, and shall secure approval of the Board prior to implementing any policy changes or program updates to the EEO Plan.

- **Procurement**

The Management Contractor must ensure that subrecipients and third-party contractors that procure goods and services using FTA funds comply with DTA procurement requirements. The Management Contractor will ensure that subrecipient and third-party contractor agreements contain the required FTA clauses on FTA funded contracts. The Board shall review procurement contracts prior to execution for compliance with FTA requirements.

- **Compliance Record Keeping**

A “Compliance Monitoring File” must be created and maintained by the Management Contractor to permit Board oversight, which includes the following items:

- Budgets, capital plans, STIP and TIP documentation
- Grant monitoring worksheet
- Periodic EEO, Drug and Alcohol, and Procurement Reports, and other reports necessary for Board oversight
- Desk review monitoring reports from any federal, state or local audits
- On-site visit report
- FTA Triennial Review reports, responses, corrective action plans, policy and procedures
- Copies of e-mail, memos, or other written correspondence, including notification informing FTA, Board, or Management Contractor of the results of monitoring

In addition, the Management Contractor shall maintain evidence that DTA vendors and contractors are being monitored to ensure they perform in accordance with the terms, conditions and specifications contained in their contracts or purchase orders.

- **Customer Complaint Procedures**

Customer complaint management is critical to successful program implementation. The Management Contractor must regularly elicit customer feedback in compliance with FTA requirements to increase customer satisfaction and ensure that subrecipients and third-party contractors are meeting the needs of the public. Documentation of these efforts shall be provided to the Board. The following methods will be used to track customer satisfaction:

- Conduct an annual review of customer satisfaction data collected by the DTA.
- Post complaint forms on the DTA website allowing customers to submit their complaints online and offer a telephone number for customers to call to submit complaints on issues such as driver courtesy, on-time performance, passenger safety and other service standards. Management Contractor responses to customer complaints must be delivered via written response within 3-10 days of the complaint.
- Maintain a formal complaint procedure approved by the Board prior to implementation.

- **Financial Reports**

Financial reports must be submitted to the Board at least monthly and to FTA and other agencies as required by applicable regulations. All expenditure obligations must be paid in accordance with applicable regulation, including prompt payment requirements to subcontractors codified in state or Federal law.

Program reports must be submitted to the FTA as required. If the DTA is unable to use all grant funds, the DTA, under the direction of the Management Contractor, will reconcile and de-obligate remaining funds in the grant and will return the remaining funds to the FTA or other applicable grant making body and report it to the Board.

The DTA, under the direction of the Management Contractor, is required to maintain all books, documents, payroll documentation, accounting records, and other evidence pertaining to costs incurred under federal grant awards during the period of the grant and for six (6) years thereafter. These records will be available for inspection by any authorized representatives of the City of Superior, the State of Minnesota, the State of Wisconsin, or the Federal Government.

- **ECHO Reimbursement**

Under the DTA founding legislation, MN statute 458A.24, “Finances”, the City Treasurer is the treasurer of the DTA, and receives and maintains custody of all moneys of the DTA from whatever source derived. The Treasurer shall only disperse funds upon written request from the DTA Director of Finance or designee and countersigned by the Management Contractor prior to submission to the Treasurer in accordance with the founding legislation. Errors or issues discovered with the FTA Electronic Clearing House Operation (“ECHO”) reimbursement requests will immediately be reported to the Treasurer, and shall be corrected or withdrawn and reported in accordance with FTA requirements.

- **Safety, Security and Emergency Management**

The Management Contractor is required to develop and maintain safety, security and emergency management policies as may be required by FTA. Changes to safety, security and emergency management policies shall be submitted to the Board prior to enactment of the change.

- **Other Policies and Procedures**

The Board reserves the right to amend this Policy from time to time, to incorporate additional policies, programs or requirements as may be required from federal, state or local agencies.

## **Rolling Stock Oversight Procedures**

FTA-funded vehicles or facilities must be maintained in compliance with all applicable federal, state and local regulations. The Management Contractor must provide the Board with periodic written reports on maintenance activities. The Board may also conduct reviews of maintenance records and inspections of FTA-funded vehicles and facilities.

- **Buy America Pre-Award and Post-Delivery Audits**

The Management Contractor shall conduct, or cause to be conducted, a pre-award audit before entering into a formal contract for the purchase of rolling stock, and certify that a post-delivery audit is complete before title to the rolling stock is accepted and the rolling stock is put into revenue service, whichever occurs first. Pre-award and post-delivery audits verify the accuracy of the Buy America certification, purchaser's requirements certification, and certification of compliance with or inapplicability of Federal motor vehicle safety standards in 49 CFR part 571 (49 CFR part 663)

- **Disadvantaged Business Enterprise (DBE) Monitoring**

The Management Contractor shall require that, as a condition to bid on a transit vehicle procurement in which FTA funds are involved, each transit vehicle manufacturer certify that it has complied with the requirements of 49 CFR section 26.49 as may be amended from time to time. The Management Contractor shall require each transit vehicle manufacturer (TVM), as a condition of being authorized to bid on transit vehicle procurements funded by FTA, certify that it has complied with the requirements of 49 CFR 26.49. The Management Contractor shall include a provision in its bid specifications requiring the certification from TVMs as a condition to bid.

## Construction Oversight Procedures

Construction oversight is designed to ensure that the project is progressing in accordance with specifications, special provisions and plans, and methods and practices specified in construction manuals.

- **Contract Administration and Performance Monitoring**

The Management Contractor will implement the following controls in the contract administration and monitoring of DTA construction contractors:

- **Labor Compliance:** Spot-checked construction logs/diaries against certified payrolls for Davis-Bacon compliance.
- **Measurement and Payment:** Monitor that source documents supporting progress payments made to the contractor are available.
- **Buy America** - Review the construction area and the contractor's documentation to make sure foreign iron and steel products are not being incorporated into the project without resident engineer's approval or an FTA waiver.

- **Disadvantaged Business Enterprise (DBE) Monitoring**

FTA recipients must comply with 49 CFR Part 26 as may be amended from time to time to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

The Management Contractor shall submit the DTA DBE program to the Board for approval prior to enacting any changes to the DBE program , and provide periodic updates to the Board on the program. The Management Contractor must include a prompt payment clause in construction contracts in compliance with the most restrictive Federal, state or local regulation. The Management Contractor shall monitor contractors for compliance with applicable DBE requirements. DBE reports are generated every six months or as required by the FTA.

## **ADA Paratransit, Fixed Route, and Charter Services Oversight Procedures**

In prohibiting discrimination in the provision of transportation services against persons with disabilities, the Americans with Disabilities Act of 1990 requires that vehicles purchased or leased after August 25, 1990, and new and altered facilities designed and constructed (as marked by the notice to proceed) after January 25, 1992, must comply with the applicable standards of accessibility in 49 CFR parts 37 and 38 (42 USC 12101-12213). The Management Contractor must ensure that these standards of accessibility, including the provision of equivalent services are complied with, and shall report to the Board at least annually.

### **▪ ADA Compliance Monitoring Procedures**

Contractors are required to follow titles II and III of the Americans with Disabilities Act (ADA) of 1990. ADA provides that no organization shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for a subrecipient's vehicle and facility accessibility and the provision of service, including complementary paratransit service.

The Management Contractor must utilize the following monitoring methods to ensure that the DTA's ADA Paratransit services is in compliance:

1. Review the ADA-related policies and monitor compliance with the policies; continuously monitor service capacity constraints; conduct quarterly meetings with paratransit stakeholders and the public. The Management Contractor shall maintain a record keeping system for monitoring on-time performance and tracking these indicators of capacity constraints. At any given time, the Management Contractor should be able to demonstrate that denials, missed trips, late pickups, etc., are not an operational pattern or practice that significantly limits the availability of ADA paratransit service, and document corrective actions as applicable. The Management Contractor shall submit a report to the Board at least monthly of the ADA paratransit service performance.
2. The Management Contractor shall submit and secure the approval of the Board prior to implementing any program changes or updates to the DTA ADA Policy.
3. Inform subcontractors of the ADA requirements via training, and ensure they are performing training for staff as applicable. The training shall ensure that personnel operate vehicles and equipment safely, assist passengers properly, and treat persons with disabilities who use the service in a respectful and courteous way, with appropriate attention to the differences among persons with disabilities. The Management Contractor shall ensure that all subcontracts for the operation of ADA Paratransit service includes mandatory driver training requirements. Training provisions must include requirements regarding



curriculum, length of training period, resources, and assurances. Contracts must call for initial driver training and annual refresher trainings. Training programs must also include passenger assistance techniques and disability sensitivity modules.

4. Management Contractor shall use surveys, checklists and interview forms, as well as follow-up correspondence to effectively document compliance. All documentation reflecting monitoring results is maintained as evidence of oversight and shall be provided to the Board at least once each year.
5. The Management Contractor shall track ADA-eligible trips separately from non-eligible trips. Periodic reservation line calls must be conducted at various times of the day to determine if a caller can reach a reservation agent. If the DTA has a communication system that provide data on average call wait time, number of missed calls, call abandonment rates, and other indicators of performance, such data must be collected and reviewed to determine compliance, and provided to the Board at least once each year.
6. The Management Contractor shall ensure that all vehicle accessibility features, such as wheelchair lifts, ramps, securement devices, signs and communication equipment for persons with disabilities be maintained and operational.

- **Fixed Route Service Monitoring**

The Management Contractor must utilize the following monitoring methods to ensure that the DTA's regular route transit services is in compliance with applicable regulations :

1. The Management Contractor shall maintain a record keeping system for monitoring on-time performance. The Management Contractor shall submit a report to the Board at least monthly of the transit service performance.
2. The Management Contractor shall submit to the Board and secure the approval of the Board prior to implementing any program changes or updates to the DTA transit services affecting routes, rates, or significant changes to DTA operations.
3. Management Contractor shall use surveys, checklists and interview forms, as well as follow-up correspondence to effectively document compliance with DTA and FTA policies, requirements and regulations.

- **Fare Policy**

The Management Contractor shall ensure that fares charged elderly persons, persons with disabilities or an individual presenting a Medicare card during off peak hours will not be more than half the peak hour fare. All changes to fares shall be submitted and approved by the Board prior to implementation.

- **Contractor Maintenance Monitoring**

The Management Contractor must keep Federally funded equipment and facilities in good operating order and maintain ADA accessibility features.

- The Management Contractor shall ensure that the DTA has a current written maintenance program for FTA-funded rolling stock that documents the maintenance plan.
  - The DTA's FTA-funded vehicles and facilities must be maintained in accordance with FTA requirements. Documentation of the condition of assets shall be conducted, and the DTA's Transit Asset Management Plan shall be presented to the **Board** at least once each year.
  - If there is equipment under warranty, the Management Contractor shall maintain documentation of warranty claims and enforcing claims with the manufacturers.
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- **Frequency of Performance Reviews and Oversight**
    - The Board shall continuously perform oversight of DTA operations. The DTA shall provide all necessary policies, procedures, documentation, reports and other information that may be required to assist in determining whether the Management Contractor is fulfilling its contractual requirements. In the event of material noncompliance, the Board may, at its sole discretion, employ disciplinary measures, up to and including termination of the Management Contract.

**Subrecipient / Service Provider Compliance Monitoring Checklist**

Evaluation Area	City Review
Vehicle Maintenance Reviews (including wheelchair lifts and other accessibility features)	Provided to the Board at least once each year
Physical Inventory of FTA Property	Provided to the Board at least once each year
Safety Policy Changes	Provide to Board at least once each year and upon significant change in policy
Driver Training	Provide summary to Board at least once each year
Security & Emergency Mgmt. Policy Changes	Provided to the Board at least once each year and upon significant policy changes
Fare Policy	Provide to the Board at least once each year and upon significant policy change
Procurement compliance	Provide to the Board at least once each year
ADA Compliance	Provide to the Board at least once each year
Title VI Compliance	Provide to the Board at least once each year
DBE Goal Attainment	Provide to the Board at least once each year
Drug and Alcohol Contractor Monitoring	Provide to the Board at least once each year
Annual MIS Reports for D&A	Provide to the Board at least once each year