

DULUTH TRANSIT AUTHORITY
MANAGEMENT CONTRACTOR OVERSIGHT
PROCEDURE

Adopted December 18, 2019
Revised November 29, 2023

Background

The Duluth Transit Authority, (“DTA”) has the power to enter into a management contract (“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 (“Oversight Procedures”) is for the DTA to:

- Ensure that all technical specifications and contract requirements are met by the management contractor (“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 Oversight 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 Oversight 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

This Oversight Procedure relies on the applicable regulations of the following, as they may be amended or superseded, and any new requirements in the annual DTA Certification and Assurance to the FTA that may be enacted in the future:

- 2 CFR Part 180-1200,
- US DOT, Uniform Administration Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR Part 1201
- Title VI of the The Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968
- Title IX of the Education Amendments of 1972, (20 U.S.C §§16811683 and 1685-1686)
- Section 504 of the Rehabilitation Act of 1973

- The Age Discrimination Act of 1975
- The Drug Abuse Office and Treatment Act of 1972
- The Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970
- The Public Health Service Act, Sections 523 and 527
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Titles II and III
- The Hatch Act, 5 U.S.C. §§1501-1508 and 7324-7328
- The Davis Bacon Act (40 U.S.C. §§276A to 276a-7)
- The Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874)
- The Contractor Work Hours and Safety Standards Act, (40 U.S.C. §§ 327-333)
- The Flood Disaster Protection Act of 1973, Evaluation of flood hazards in floodplains, EO 11988, the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.
- The National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order 115414, Notification of violating facilities pursuant to EO 11738, Protections of wetlands pursuant to EO 11990
- The Clean Air Act of 1955
- The Safe Drinking Water Act of 1974
- The Endangered Species Act of 1973
- The Wild and Scenic Rivers Act of 1968
- The National Historic Preservation Act of 1974, Section 106
- The Archeological and Historical Preservation Act of 1974
- Public Law 93-348
- The Laboratory Animal Welfare Act of 1966
- The Lead Based Poisoning Act
- The Single Audit Act Amendments of 1996 and 2 CFR Part 200. Subpart F, Audit Requirements
- Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended
- The Trafficking Victims Protection Act (TVPA) of 2000, Section 106(g)
- The Consolidated Appropriations Act of 2021, Title IV of Division M, Division E, Title VII, §§744-745
- The CARES Act, Title XII of division B
- The American Rescue Plan Act of 2021
- The Transportation Infrastructure Finance and Innovation Act or State Infrastructure Act

- The latest edition of FTA Circular 4220.1, “Third Party Contracting Guidance”

- All applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the program under which it is applying for assistance.

- U.S. OMB guidance, “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR §§200.317-200.327, “Procurement Standards”
- Americans with Disabilities Act and applicable regulations thereto
- 2 CFR Parts 180 and 1200, Executive Order 12549
- 7 U.S.C. §§2131 et seq.

- 16 U.S.C. §469a-1, §470, EO 11593
- 16 U.S.C. §§1271 et seq.
- 22 U.S.C. §7102
- 22 U.S.C. §7104
- 23 U.S.C. §§601-610
- 29 U.S.C. §794
- 31 U.S.C §1352
- 42 U.S.C §§ 290 dd-3 and 290 ee-3
- 42 U.S.C. §§ 3601 et. seq.
- 42 U.S.C. §§4801 et seq.
- 42 U.S.C. §§ 6101-6107
- 42 U.S.C §§ 7401 et seq.
- 42 U.S.C. §§47284763.
- Appendix A of OPM’s Standards for a Merit System of Personnel Administration, (5 CFR 900, Subpart F)
- 49 CFR § 20.110
- 49 CFR Part 18
- 49 CFR Part 20
- 49 CFR Part 21
- 49 CFR Part 24
- 49 CFR Part 25
- 49 CFR Part 26
- 49 CFR Part 27
- 49 CFR Part 37 and 38
- 49 CFR part 571
- 49 CFR Part 625
- 49 CFR Part 655
- 49 CFR Part 663
- 49 CFR Part 665
- 49 CFR Part 673
- 49 U.S.C §5307
- 49 U.S.C §5309
- 49 U.S.C §5310
- 49 U.S.C §5311
- 49 U.S.C §5323
- 49 U.S.C §5326
- 49 U.S.C. §5329
- 49 U.S.C. §5332
- 49 U.S.C. §5334
- 49 U.S.C. §5337
- 49 U.S.C. §5339
- 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 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 conformance with DTA policies and procedures. Performance data may also be considered in the evaluation of the Management Contractor for participation in future projects.

- **City of Duluth and the City of Superior:** The Board will conduct oversight of the DTA consistent with oversight requirements of the FTA, and shall provide copies of oversight documentation and findings to the City of Duluth and the City of Superior at least quarterly. The Board will immediately share with the City of Duluth and the City of Superior any corrective action notifications to the Management Contractor 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 City of Duluth or City of Superior oversight staff shall submit required reports to the Board at least quarterly. All oversight activities, findings, corrective action notifications and other actions related to this Oversight Policy shall be shared with the Management Contractor and 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 Board shall require the Management Contractor to 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 Management Contractor.

Key Requirement:

- The 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 Board shall require the Management Contractor to 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 Board shall require the Management Contractor to 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 Board shall require the Management Contractor to 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 awards over \$50,000.00 prior to execution for compliance with DTA Financial Management procedures.

- **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 Board shall require Management Contractor to 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 Board shall require the Management Contractor to 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 Duluth, 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 Director of Finance or designee and countersigned by the General Manager 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 Board shall require the Management Contractor to maintain safety, security and emergency management policies as 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 Board shall require the Management Contractor to 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 Board shall require the Management Contractor 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 Board shall require the Management Contractor to 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 Board shall require the Management Contractor to 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 Board shall require the Management Contractor to 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 employees and 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 employees

and 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 Board shall require the Management Contractor to 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 Board shall require the Management Contractor to 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 and the Duluth City Council in accordance with MN Stat 458A.26(g) prior to implementation.

▪ **Contractor Maintenance Monitoring**

The Board shall require the Management Contractor to 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 Board shall require the Management Contractor to provide all necessary policies, procedures, documentation, reports and other information that may be required to assist the Board 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.

The Management Contractor requirements are incorporated by reference into the Management Agreement between the Duluth Transit Authority and the ATE Management of Duluth, Inc., dated November 1, 2022 and amended December 28, 2023.

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 |

At the Board’s discretion, submission of the results of the annual Single Audit may serve as documentation for some or all of the above oversight areas.