Valley Transit

Date: February 8, 2017

To: Common Council
City of Appleton

Fox Cities Transit Commission

From: Ron McDonald, General Manager RCM

Re: Request to Purchase Transit Buses

Valley Transit is hereby requesting authorization to purchase three (3) 40' New Flyer Xcelsior transit buses not to exceed $1,355,600.00 inclusive of miscellaneous tools and parts.

The Federal Transit Administration will invest 80% ($1,084,480) and local investment will be used for the remaining 20% ($271,120).

The new buses will replace existing 1994 Orion transit buses. The Federal Transit Administration requires heavy duty transit buses to be operated a minimum of 12 years or 500,000 miles. The Valley Transit buses scheduled for replacement have more than doubled the minimum requirements set forth by the Federal Transit Administration.

It is the desire of Valley Transit to issue a purchase order to New Flyer through a Piggyback Procurement previously solicited by Connect Transit in Normal, IL. Please see the following Assignment of an Option to Purchase Agreement. In addition, please find an excerpt from the Federal Transit Administration Best Practices Procurement Manual regarding piggyback procurements.

RECOMMENDATION:

Authorize Valley Transit to purchase three (3) 40' New Flyer Xcelsior transit buses not to exceed $1,355,600. Inclusive of miscellaneous tools and parts.

Assignment of an Option to Purchase Agreement

Connect Transit, "Assignor", hereby assigns to the **City of Appleton-Valley Transit** its option to purchase from New Flyer, "Seller", **three (3)** ("Option Vehicles") at a price and under the terms and conditions contained in the Sellers written cost proposal dated December 5, 2014; Assignor's RFP# 14-02 dated May16, 2014; and Assignor's Agreement dated May 14, 2015 ("Contract").

Such option commenced on May 14, 2015, and may be exercised at any time on or before May 14, 2020.

With respect to the Option Vehicles assigned hereunder and this Assignment, Assignee agrees to perform all covenants, conditions and obligations required of Assignor under said Contract and agrees to defend, indemnify and hold Assignor harmless from any liability or obligation under said Contract. Assignee further agrees to hold Assignor harmless from any deficiency or Defect in the legality or enforcement of the terms of said Contract or option to purchase thereunder. Assignee agrees and understands that Assignor is not acting as a broker or agent in this transaction and is not representing Seller or Assignee, but rather is acting as a principle in assigning its interest in the above-referenced option to purchase the Option Vehicles under the Contract to Assignee.

Assignee hereby unconditionally releases and covenants not to sue Assignor upon any claims, liabilities, damages, obligations or judgments whatsoever, in law or in equity, whether known or unknown, or claimed, which they or either of them have or claim to have or which they or either of them may have or claim to have in the future against Assignor, with respect to the Option Vehicles or any rights whatsoever assigned hereunder.

Dated this 22 day of December, 20 16

Assignor
(Connect Transit)

Ronald C McDonald Jr.
Assignee
(City of Appleton-Valley Transit)

I hereby accept and approve the terms of this agreement and agree to hold Assignor harmless from any further liability or obligation under our agreement.

Seller
(New Flyer)

6.3.3 Joint Procurements of Rolling Stock and "Piggybacking"

Requirement

FTA Circular 4220.1E applies to all third party contract actions undertaken by grantees with Federal funds, including actions taken pursuant to the contracts of other entities, such as (1) the exercise of options which have been assigned to the grantee by another entity which awarded the contract initially, (2) the assignment of contracts themselves to a grantee by another entity (under which the grantee will spend Federal funds), and (3) joint procurements with other entities (under which the grantee will spend Federal funds).

Of particular significance are the following provisions of FTA Circular 4220.1E:

7.e. *Intergovernmental Procurement Agreements*.

- Grantees are encouraged to utilize available state and local intergovernmental agreements for procurement or use of common goods and services. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the grantee's purchase document. 16
- Grantees are also encouraged to jointly procure goods and services with other grantees. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents. 17
- Grantees may assign contractual rights to purchase goods and services to other grantees if the original contract contains appropriate assignability provisions. Grantees who obtain these contractual rights (commonly known as "piggybacking") may exercise them after first determining the contract price remains fair and reasonable. 18

8.a. *Full and Open Competition*. All procurement transactions will be conducted in a manner providing full and open competition.

9.i.(1) *Evaluation of Options*. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

Discussion

Recently, there has been a growing trend amongst transit systems to become creative in the acquisition of rolling stock. The most constructive of these techniques involve advance planning and joint procurement by several systems. FTA encourages this technique. In these joint procurements, the needs of the various transit systems are defined in the solicitation and the manufacturers are asked to bid upon the total known needs of the agencies involved. In other situations, transit agencies will identify an existing contract of another agency and "piggyback" that contract by means of an assignment of contract rights such as an assignment of options....