

COUNCIL BILL NO. 16-45

ORDINANCE NO. 16-44

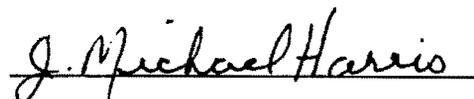
An Ordinance amending the Purchasing Manual of the City of Carthage by adding a new Appendix I regarding Federal Transit Administration programs.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CARTHAGE, JASPER COUNTY, MISSOURI as follows:

SECTION I: The Purchasing Manual of the City of Carthage is hereby amended to include the addition of a new section (Appendix I, FEDERAL TRANSIT ADMINISTRATION (FTA) FUNDED PROGRAMS), as set forth on the attachment hereto.

SECTION II: This ordinance shall take effect and be in force from and after its passage and approval.

PASSED AND APPROVED THIS 25TH DAY OF OCTOBER, 2016.



J. Michael Harris, Mayor

ATTEST:


Traci Cox, City Clerk

Sponsored by: Insurance Audit & Claims Committee

APPENDIX I
FEDERAL TRANSIT ADMINISTRATION (FTA) FUNDED PROGRAMS

This appendix applies to procurements involving Federal Transit Administration (FTA) funded programs. Any sections of the Purchasing Manual which are in conflict with the provisions herein are hereby superseded.

LOCAL PREFERENCES

The City of Carthage will not grant any preference to local or State businesses for any procurement involving FTA-funded programs.

SPECIAL PROVISIONS REGARDING FTA-FUNDED PROCUREMENTS

PROTESTS

Pre-Bid Opening Protests. If an Offeror can demonstrate that the Contract Documents issued by The City of Carthage are unduly exclusionary and restrictive or that federal, state or local laws or regulations have been violated during the course of the procurement, then the Offeror may seek a review by the City Administrator or his appointed representative, at 326 Grant St. Protests shall be clearly identified as Protests and submitted in writing as early as possible, but no later than five (5) business days before proposal opening. Within four (4) business days after receipt of a pre-proposal protest, the City Administrator shall make one of the determinations listed in the paragraph entitled Rulings on Protests.

Post-Bid Opening Protests. A protest to the acceptance or rejection of any or of all offers or bids to a contract, or to the award thereof, or to any such action proposed or intended by The City must be received in writing by the City Administrator no later than five (5) business days after the protesting party first learned, or reasonably ought to have learned, of the action or the proposed or intended action to which he/she protests.

In the event the protester alleges that the City Administrator or the representative appointed by the City Administrator to serve as Decision-Maker for the particular protest, engaged in improper conduct during the subject procurement, the General Counsel shall serve as the Decision-Maker. In the event it has been alleged that the General Counsel has engaged in improper conduct during the subject procurement, either the City Administrator or the City Engineer shall serve as the Decision-Maker.

Rulings on Protests. Within four (4) business days, the City Administrator shall render one of the following determinations:

- (a) Protest is overruled.
- (b) Protest is substantiated. City Administrator shall issue instructions to remedy issues relating to the protest.
- (c) Procurement activity is suspended until written notification by the City Administrator.

The determination shall be in writing and shall provide at a minimum a general response to each material issue raised in the protest. All documents submitted by the Protester and/or City staff and reviewed by the Decision-Maker in the reaching of a determination shall form and be retained by The City as the formal record of the dispute resolution process.

The issuance of the foregoing determination is the City's final decision of the dispute.

All interested parties shall be notified of any protests that are filed. The City shall refrain from awarding a contract within five business days of the date of a decision rendered by the City Administrator regarding a protest, unless The City determines that:

(a) The items to be procured are urgently required.

(b) Delivery or performance will be unduly delayed by failure to make a prompt award.

(c) Failure to make a prompt award will otherwise cause undue harm to the City of Carthage or the State or federal government.

Protester's Appeal to Federal or State Agencies. In the event that the City of Carthage fails to have written protest procedures or fails to abide by the protest procedures set forth above, and federal or state funds are participating in the procurement, then the protester may seek a review by the appropriate funding agency.

Protesters shall file such a protest not later than five (5) business days after a final decision is rendered under the City of Carthage's protest procedure. In instances where the protester alleges that the City failed to make a final determination on the protest, protesters shall file a protest with the appropriate agency not later than five (5) business days after the protester knew or should have known of the City's failure to render a final determination on the protest.

REQUIREMENTS FOR DETERMINATION OF CONTRACTOR/VENDOR RESPONSIBILITY

SAFETEA-LU amended 49 U.S.C. Section 5325 to require FTA-assisted contract awards be made only to "responsible" contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract.

Responsibility is determined by the grantee after receiving bids or proposals and before making contract award. FTA expects the prospective contractor to demonstrate affirmatively to the grantee that it qualifies as "responsible" and that its proposed subcontractors also qualify as "responsible."

Factors to consider when making responsibility determinations include:

- Integrity and Ethics. Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).
- Debarment and Suspension. Is neither debarred nor suspended from Federal programs under US DOT regulations, "Non-procurement Suspension and Debarment."
- Affirmative Action and DBE. Is in compliance with the Common Grant Rule's Affirmative Action and US DOT's Disadvantaged Business Enterprise requirements.

- **Public Policy.** Is in compliance with the public policies of the Federal government, as required by 49 U.S.C. Section 5325(j)(2)(B).
 - **Administrative and Technical Capacity.** Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D).
 - **Licensing and Taxes.** Is in compliance with applicable licensing and tax laws and regulations.
 - **Financial Resources.** Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).
 - **Production Capability.** Has, or can obtain, the necessary production, construction, and technical equipment and facilities.
 - **Timeliness.** Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
 - **Performance Record.** Is able to provide a satisfactory current and past performance record.
- REFERENCES: 49 U.S.C. Section 5325, 2 CFR 200.318(h), 49 CFR 18.36(b)(8) FTA Circular 4220.1F, Ch. VI, Section 8.b

DISPUTE RESOLUTION

Disputes - Disputes arising in the performance of FTA contracts which are not resolved by agreement of the parties shall be decided in writing by City's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, the contractor mails or otherwise furnishes a written appeal to City's Program Director. In connection with any such appeal, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of City's Program Director shall be binding upon the contractor and the contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by City, the contractor shall continue performance under a contract while matters in dispute are being resolved.

Claims for Damages - Should either party to a contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless a contract provides otherwise, all claims, counterclaims, disputes and other matters in question between City and a contractor arising out of or relating to an agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within Jasper County, Missouri.

Rights and Remedies - The duties and obligations imposed by contract documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by City or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.