



**COUNTY OF KENDALL, ILLINOIS  
ECONOMIC DEVELOPMENT & ADMINISTRATION**

**Kendall County Office Building, 111 W. Fox Street  
County Board Room 209, Yorkville, IL 60560**

**Wednesday, November 15, 2023, at 5:30pm**

**MEETING AGENDA**

- 1. Call to Order**
- 2. Roll Call:** Elizabeth Flowers (Chair), Scott Gengler, Dan Koukol, Brooke Shanley, Seth Wormley
- 3. \*MOTION (VV) Approval of Agenda**
- 4. Committee Reports and Updates**
  - A. Animal Control Department Update – Director Taylor Cosgrove
  - B. Emergency Management Agency Update – Director Roger Bonuchi
  - C. Revolving Loan Status Update
- 5. New Committee Business**
  - A. MOTION (FWD to CB): Discussion and Approval of ADA Transportation Policy.
  - B. UPDATE: Lucky Beef N Dogs
  - C. MOTION (FWD to CB): Discussion and Approval of Kendall Area Transit Procurement Policy
  - D. DISCUSSION: Drafting of Kendall County Animal Control Ordinance
- 6. Old Committee Business**
- 7. Chairman’s Report**
- 8. Public Comment**
- 9. Questions from the Media**
- 10. Executive Session**
- 11. Items for Committee of the Whole**
- 12. Action Items for County Board**
- 13. Adjournment**

*If special accommodations or arrangements are needed to attend this County meeting, please contact the Administration Office at 630-553-4171, a minimum of 24-hours prior to the meeting time*

Animal Control

Economic Development & Administration Committee

11/15/23

1. October monthly reports
2. Vehicles: new Equinox, and disposal of the 2007 Dodge Caravan
3. Cases of Note
  - a. Dangerous Dog Determinations
  - b. FOIA
4. Discussion on County Ordinance regarding dog bites

# Kendall County Animal Control

802 John Street  
Yorkville IL 60560



Bites between 10/1/2023 and 10/31/2023

<u>Date</u>	<u>Pet Name</u>	<u>animalid</u>	<u>Breed</u>	<u>Vaccinated</u>	<u>Altered</u>	<u>Victim/Owner</u>	<u>Multiple Bites</u>	<u>bite severity</u>	<u> euthanized</u>
10/06/2023	SIRIUS	A037442	AM PIT BULL TER	UTD	ALTERED	VICTIM	NO	3	Yes
10/07/2023	PUMBA	A040818	PIT BULL	NOT UTD	ALTERED	OWNER	NO	3	No
10/10/2023	SIRIUS	A037442	AM PIT BULL TER	UTD	ALTERED	VICTIM	YES	3	Yes
10/11/2023	PHINEHAS	A020429	DOMESTIC SH	UTD	ALTERED	OWNER	NO	4	No
10/13/2023	CHARLIE	A040935	AUST CATTLE DOG	UTD	ALTERED	VICTIM	YES	2.5	No
10/15/2023	UNKNOWN	A041151	DOMESTIC SH	NOT UTD	UNALTERED	OWNER	NO	2	No
10/15/2023	SNOW	A040930	TIBETAN MASTIFF	UTD	ALTERED	VICTIM	NO	2	No
10/16/2023	SULLY	A016278	PIT BULL	UTD	UNALTERED	OWNER	NO	2	No
10/17/2023	STELLY	A040945	PIT BULL / MIX	UTD	UNALTERED	VICTIM	NO	3	No
10/18/2023	ELLA	A041111	DOMESTIC SH	UTD	ALTERED	OWNER	NO	2	No
10/19/2023	WILD RACCOON	A041069	RACCOON	NOT UTD	UNALTERED	VICTIM	UNK	2	Yes
10/19/2023	LUNA	A016577	CANE CORSO	UTD	ALTERED	VICTIM	NO	4	No
10/21/2023	MR CARLOS	A026898	AMERICAN STAFF	UTD	UNALTERED	VICTIM	YES	3	No
10/21/2023	MELEK	A041042	SIBERIAN HUSKY / GOLDEN RETR	UTD	UNALTERED	VICTIM	NO	3	No
10/23/2023	WELLER	A015688	BLUETICK HOUND	UTD	ALTERED	VICTIM	NO	2	No
10/25/2023	MADDOX	A041103	ROTTWEILER	UTD	ALTERED	OWNER	NO	2	No
10/26/2023	SMUDGE	A041101	DALMATIAN	NOT UTD	ALTERED	VICTIM	NO	2	No
10/26/2023	DALLAS	A027858	MIXED	UTD	ALTERED	VICTIM	NO	2	No
10/29/2023	ALLY	A041138	LABRADOR RETR / MIX	UTD	ALTERED	VICTIM	NO	2	No
10/29/2023	MALA	A013754	PIT BULL	NOT UTD	ALTERED	VICTIM	NO	3	No
10/30/2023	ZEUS	A005357	ENG BULLDOG	UTD	ALTERED	VICTIM	NO	2	No
10/31/2023	UNKNOWN	A041152	PUG / MIX	NOT UTD	UNALTERED	VICTIM	NO	1	No

Date                      Pet Name                      animalid                      Breed                      Vaccinated                      Altered                      Victim/Owner                      Multiple Bites                      bite severity                      euthanized

Breed	Total
<b>Total</b>	<b>21</b>
<b>CAT</b>	<b>3</b>
DOMESTIC SH	3
<b>DOG</b>	<b>17</b>
AM PIT BULL TER	1
AMERICAN STAFF	1
AUST CATTLE DOG	1
BLUETICK HOUND	1
CANE CORSO	1
DALMATIAN	1
ENG BULLDOG	1
LABRADOR RETR / MIX	1
MIXED	1
PIT BULL	3
PIT BULL / MIX	1
PUG / MIX	1
ROTTWEILER	1
SIBERIAN HUSKY / GOLDEN RETR	1
TIBETAN MASTIFF	1
<b>OTHER</b>	<b>1</b>

<u>Date</u>	<u>Pet Name</u>	<u>animalid</u>	<u>Breed</u>	<u>Vaccinated</u>	<u>Altered</u>	<u>Victim/Owner</u>	<u>Multiple Bites</u>	<u>bite_severity</u>	<u> euthanized</u>
			Total						
	RACCOON		1						



**Kennel Statistics Report**  
Intakes from 10/01/23 to 10/31/23

	CAT	DOG	KITTEN	OTHER	TOTAL
OWNER SUR	5	6	2	5	18
STRAY	9	19	17	4	49
<b>TOTAL</b>	<b>14</b>	<b>25</b>	<b>19</b>	<b>9</b>	<b>67</b>

**Kennel Statistics Report**  
Outcomes from 10/01/23 to 10/31/23

		CAT	DOG	KITTEN	OTHER	PUPPY	TOTAL
ADOPTION		12	11	4	2	1	30
	TOTAL	12	11	4	2	1	30
DIED		1	0	2	0	0	3
	TOTAL	1	0	2	0	0	3
DISPOSAL		0	0	0	2	0	2
	TOTAL	0	0	0	2	0	2
EUTH		0	0	0	1	0	1
	TOTAL	0	0	0	1	0	1
RELOCATE		0	0	0	1	0	1
	TOTAL	0	0	0	1	0	1
RTO		3	13	0	0	0	16
	TOTAL	3	13	0	0	0	16
TRANSFER		2	2	8	4	0	16
	TOTAL	2	2	8	4	0	16
<b>TOTAL</b>		<b>18</b>	<b>26</b>	<b>14</b>	<b>10</b>	<b>1</b>	<b>69</b>

## Average Length Of Stay

10/1/2023 - 10/31/2023

*Statistics based off intakes in listed date range. NON LR includes all non live-releases, such as EU, Escaped, Missing, Died, etc.  
Live Releases Only includes Adoption, Relocate, Rescue, RTO and Transfer outcomes. \*Fosters not factored into totals.  
Formula: (total amount) / (total average)*

<b>CAT</b>	<b># Animals</b>	<b>Avg Days</b>
<b>ADOPTION</b>	<b>6</b>	<b>17.83</b>
<b>FOSTER*</b>	<b>18</b>	
<b>NON LR</b>	<b>2</b>	<b>13.00</b>
<b>RTO</b>	<b>2</b>	<b>2.00</b>
<b>TRANSFER</b>	<b>5</b>	<b>7.60</b>
<b>FOSTER</b>		<b>0.00</b>
<b>Total :</b>	<b>33</b>	<b>10.67</b>

<b>DOG</b>	<b># Animals</b>	<b>Avg Days</b>
<b>ADOPTION</b>	<b>7</b>	<b>13.71</b>
<b>FOSTER*</b>	<b>3</b>	
<b>RTO</b>	<b>13</b>	<b>1.62</b>
<b>TRANSFER</b>	<b>2</b>	<b>10.00</b>
<b>FOSTER</b>		<b>0.00</b>
<b>Total :</b>	<b>25</b>	<b>5.23</b>



## Kennel Comparisons Statistics

### "Intake Comparisons"

1/1/22 to 10/31/22

1/1/23 to 10/31/23

<b>Dogs</b>				
Strays	172	209	↑	21.5 %
Owner Surrenders	40	99	↑	147.5 %
BORN	0	15	↑	1500.0 %
CONFISCATE	5	5	↑	- %
TRANSFER	0	1	↑	100.0 %
<b>Total Dogs Received:</b>	<b>217</b>	<b>329</b>	↑	<b>51.6 %</b>
<b>Cats</b>				
Strays	47	212	↑	351.1 %
Owner Surrenders	0	51	↑	5100.0 %
BORN	0	1	↑	100.0 %
CONFISCATE	1	13	↑	1200.0 %
<b>Total Cats Received:</b>	<b>48</b>	<b>277</b>	↑	<b>477.1 %</b>
<b>Total Intakes:</b>	<b>265</b>	<b>606</b>	↑	<b>128.7 %</b>

### "Outcome Comparisons"

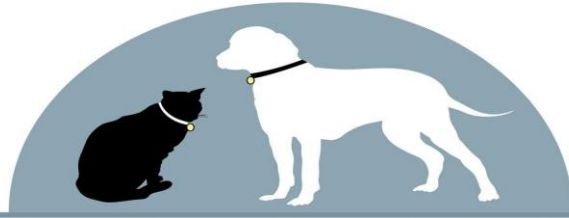
1/1/22 to 10/31/22

1/1/23 to 10/31/23

<b>Dogs</b>				
Adoption	87	135	↑	55.2 %
Euthanasia	10	16	↑	60.0 %
Return to Owner	111	150	↑	35.1 %
DIED	0	1	↑	100.0 %
RELOCATE	1	0	↓	100.0 %
TRANSFER	6	31	↑	416.7 %
<b>Total Dogs Dispositioned:</b>	<b>215</b>	<b>333</b>	↑	<b>54.88</b>
<b>Cats</b>				
Adoption	28	119	↑	325.0 %
Euthanasia	2	13	↑	550.0 %
Return to Owner	5	13	↑	160.0 %
DIED	0	11	↑	1100.0 %
DISPOSAL	0	3	↑	300.0 %
RELOCATE	0	7	↑	700.0 %
TRANSFER	9	90	↑	900.0 %
<b>Total Cats Dispositioned:</b>	<b>44</b>	<b>256</b>	↑	<b>481.82</b>
<b>Total Outcomes:</b>	<b>259</b>	<b>589</b>	↑	<b>127.4 %</b>



Animals in the Shelter on 11/14/2023	CAT	DOG	Total
	33	19	52



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**KENDALL COUNTY**  
**ANIMAL CONTROL**

***Financial Statements FY23***  
***October 2023***

**KENDALL COUNTY ANIMAL CONTROL FUND #1301**  
**Statement of Revenues And Expenditures**  
**10/31/2023**

	<b>CURRENT YEAR</b>				<b>PRIOR YEAR</b>	<b>VARIANCE</b>
	<b>FY23 Budget</b>	<b>October Actual</b>	<b>FY23 YTD</b>	<b>YTD Percent of Budget</b>	<b>FY22 YTD</b>	<b>FY23 YTD v. FY22 YTD</b>
<b>REVENUE</b>						
Fines & Fees	\$ 20,000	\$ 5,029	\$ 53,156	265.8%	\$ 30,281	\$ 22,875
Miscellaneous	300		12	4.0%	108	(96)
Donations	5,000	145	3,283	65.7%	1,174	2,109
Rabies Tags Sold	300,000	13,055	242,866	81.0%	233,017	9,849
Intact Registration Fee	13,000	465	11,085	85.3%	8,198	2,887
Transfer In from State Pet Fund			-			
<b>Total Revenue</b>	<b>\$ 338,300</b>	<b>\$ 18,694</b>	<b>\$ 310,402</b>	<b>91.8%</b>	<b>\$ 272,778</b>	<b>\$ 37,624</b>
<b>EXPENDITURE</b>						
Salary - Other	\$ 119,808	\$ 7,662	\$ 80,051	66.8%	\$ 58,231	\$ 21,820
Salary - Administrator	6,500	500	5,800	89.2%	6,000	(200)
Salary - Animal Control Warden	61,800	4,615	51,923	84.0%	50,769	1,154
Salary - Assistant Warden	41,600	3,520	40,832	98.2%	38,241	2,591
Overtime	500	-	265	53.0%	-	265
Office Supplies	1,200	-	1,251	104.2%	944	307
Postage	1,600	43	1,433	89.6%	1,499	(66)
Training	2,000		188	9.4%	240	(52)
Telephone & Pager	1,200	84	929	77.4%	721	208
Contractual Service	6,000		363	6.0%	-	363
Equipment	3,500		3,044	87.0%	2,026	1,018
Vehicle Maintenance	1,600		1,737	108.6%	350	1,388
Gasoline/Fuel/Oil	600	122	1,055	175.8%	230	825
Uniforms	750		594	79.2%	374	220
Refunds	500				940	
Observation/Disposal	500		62	12.3%	200	(138)
Microchips	1,500		1,052	70.1%	1,375	(323)
Volunteers/Public Relations	1,000		587	58.7%	-	587
Neuter/Spay Fees					-	-
Rabies Tags	2,500		2,377	95.1%	2,313	64
Transportation, Board & Care	10,000	1,747	6,868	68.7%	3,328	3,540
Kennel Improvements					-	-
Capital Expenditures					-	-
<b>Total Operating Expenditure</b>	<b>\$ 264,658</b>	<b>\$ 18,293</b>	<b>\$ 200,409</b>	<b>75.7%</b>	<b>\$ 167,780</b>	<b>\$ 32,629</b>
<b>TRANSFERS OUT</b>						
Transfer to General Fund	\$ 35,200	\$ 3,181	\$ 12,544	35.6%	\$ 10,968	\$ 1,576
Transfer to IMRF Fund	17,075	2,292	10,447	61.2%	10,730	(283)
Transfer to SS Fund	13,000	3,077	13,912	107.0%	11,842	2,070
Transfer to Building Fund	15,000		-			
<b>Total Transfers Out</b>	<b>\$ 80,275</b>	<b>\$ 8,549</b>	<b>\$ 36,903</b>	<b>46.0%</b>	<b>\$ 33,540</b>	<b>\$ 3,363</b>
<b>Total Expenditure &amp; Transfers Out</b>	<b>\$ 344,933</b>	<b>\$ 26,843</b>	<b>\$ 237,313</b>	<b>68.8%</b>	<b>\$ 201,320</b>	<b>\$ 35,992</b>
<b>Total Revenue Over/(Under) Expenditure</b>	<b>\$ (6,633)</b>	<b>\$ (8,149)</b>	<b>\$ 73,089</b>	<b>-1101.9%</b>	<b>\$ 71,458</b>	<b>\$ 1,631</b>

**KENDALL COUNTY ANIMAL CONTROL FUND #1301  
FUND (CASH) BALANCE  
FY 2023**

MONTH	FY23 Monthly REVENUE OVER/(UNDER) EXPENSES	FY23 FUND (CASH) BALANCE	FY22 Monthly REVENUE OVER/(UNDER) EXPENSES	FY22 FUND (CASH) BALANCE
Beginning Fund (Cash) Balance		\$ 153,804		\$ 159,477
December-22	\$ 10,068	163,872	\$ (6,190)	153,287
January-23	15,569	179,441	21,276	174,563
February-23	22,472	201,913	392	174,955
March-23	5,701	207,614	4,448	179,403
April-23	(10,885)	196,729	6,407	185,809
May-23	9,548	206,277	5,664	191,473
June-23	14,436	220,713	14,073	205,546
July-23	6,294	227,007	1,276	206,822
August-23	11,574	238,581	11,342	218,164
September-23	1,487	240,068	10,828	228,992
October-23	(8,149)	231,919	(4,195)	224,798
November-23			(70,994)	153,804
Fund (Cash)	\$ 78,114		\$ (5,673)	
YTD Fund Balance		\$ 231,919		\$ 153,804

**KENDALL COUNTY ANIMAL CONTROL**  
**Statement of Revenues And Expenditures**  
**10/31/2023**

**Animal Medical Care Fund #1302**

	<b>FY23 Budget</b>	<b>October Actual</b>	<b>YTD Actual</b>	<b>YTD Percent of Budget</b>	<b>Fund Balance</b>
<b>Beginning Balance</b>	<b>\$ 16,300</b>				FY13 \$250 FY14 21,935 FY15 33,497
<b>Revenue</b>					FY16 32,810 FY17 32,325 FY18 26,165 FY19 20,132
Donations & Receipts	10	10	5,320	53197.9%	FY20 18,939
Total Revenue	10	10	5,320	53197.9%	FY21 18,050 FY22 \$ 16,300
<b>Expenditure</b>					
Animal Medical Care Expenses	3,000	-	3,266	108.9%	
Heartworm Testing	500	-	138	27.5%	
FeLuk/FIV Testing	750	-	437	58.3%	
Total Expenditure	4,250	-	3,840	90.4%	
<b>Ending Balance</b>	<b>\$ 12,060</b>	<b>\$ 10</b>	<b>\$ 1,479</b>		

**County Animal Population Control Fund #1309**

	<b>FY23 Budget</b>	<b>October Actual</b>	<b>YTD Actual</b>	<b>YTD Percent of Budget</b>	<b>Fund Balance</b>
<b>Beginning Balance</b>	<b>\$ 114,739</b>				FY11 46,246 FY12 60,939 FY13 64,358
<b>Revenue</b>					FY14 71,549 FY15 83,094 FY16 97,935 FY17 106,508
Fees	12,000	880	16,538	137.8%	FY18 108,859
Total Revenue	12,000	880	16,538	137.8%	FY19 117,265 FY20 115,665 FY21 114,716 FY22 114,739
<b>Expenditure</b>					
Spay/Neuter Fees - Targeted Dogs/Cats	10,000	663	9,528	95.3%	
Spay/Neuter Fees - Adopted Dogs/Cats	10,000	1,899	27,135	271.4%	
Total Expenditure	20,000	2,562	36,663	183.3%	
<b>Ending Balance</b>	<b>\$ 106,739</b>	<b>\$ (1,682)</b>	<b>\$ (20,125)</b>		

**Animal Control Capital Fund #1400**

	<b>FY23 Budget</b>	<b>October Actual</b>	<b>YTD Actual</b>	<b>YTD Percent of Budget</b>	<b>Fund Balance</b>
<b>Beginning Balance</b>	<b>\$ 42,131</b>				FY11 87,769
<b>Expenditure</b>					FY13 46,762 FY14 51,661 FY15 69,276 FY16 125,571 FY17 134,712 FY18 142,293
Expense - Building Improvements	10,000	-	-	-	FY19 113,553
Capital Expenditure	2,500	-	(3,800)	-152.0%	FY20 3,551 FY21 23,607 FY22 \$ 42,131
Total Expenditure	12,500	-	(3,800)	-30.4%	
<b>Transfers In</b>					
Transfers In - from Animal Control Fund	15,000	-	-	0.0%	
Total Transfers In	15,000	-	-		
<b>Ending Balance</b>	<b>\$ 44,631</b>	<b>\$ -</b>	<b>\$ 3,800</b>		

# Kendall County Emergency Management Agency

1102 Cornell Lane, Yorkville Illinois 60560

Roger Bonuchi, Director

Tracy Page, Deputy Director

## Emergency Management Report

**OCTOBER 2023**

### ○ **KCEMA Operations**

- The NQS foundation is forming well. Kim has provided a task book template that we will shape for NQS. With the exception of RADIO, COML, and COMT, task books will be created for each by one of the members on that category.
- New training expectations list for 2024 was present to the membership October 18<sup>th</sup> and agreed upon.
- Volunteer hours' requirement set at 50 hours again for 2024

### ○ **Hazard Mitigation Plan**

- Ongoing project and assessments.
- Meeting 4 was held on October 24, 2023
- Public Forum will be February 20, 2024

### ○ **LEPC Committee**

- The first committee meeting was held on October 5, 2023
- LEPC will be installing the CAMEO suite of software tools on the EOC PCs.
- Rob DeLong was elected LEPC Chair, Roger Bonuchi Co-Chair, and Tray Page as Secretary.

### ○ **UCP Status (Our command bus)**

- Ordering parts to fix the mast air inlet.
- The VHF radio on the dash has been replaced and tested.
- Working on the dead antenna in the dispatch area.
- Both PC in the dispatch are need some repair.

### ○ **Radios**

- In the process of upgrading the current Starcom channel profile (ITTF), in a number of our radios, to the new Statewide Interop Template (SWIT). The 700/800Mhz channel layout has changed dramatically and must be updated. The SIEC will provide guidance on what channels can be used and by whom after November 29<sup>th</sup>.

### ○ **Search & Rescue**

- KCEMA SAR personnel participated in the recent SAREX last weekend. There were 22 ground searchers, drones, bicycles, and UTVs from multiple agencies attending. Kane County had their ITECS trailer on site. The exercise started off at around noon with the Kane County resources being deployed. This included Aurora, Kane County Forest Preserve personnel, Elburn/Campton Hills CERT, and Kane OEM team. Also deployed at that time was the Kane County Sheriff's Office K9 and Drones, along with an officer that liaised with Forest Preserve personnel. Around 14:00 mutual aid agencies started filtering in. Participating were; Kendall County EMA SAR, McHenry County EMA,

Lake County EMA, Carol Stream SAR, Elk Grove Village CERT SAR, and Hanover Township Emergency Services. Our own Joe Buan and at least one other person practiced some train running exercises with the mountain bikes and then participated in an initial search assignment in the actual exercise.

- More on the new KCEMA bike team later.

○ **Meetings/Training/Volunteers/Details**

- Attended Yorkville Chamber Event – Biz Boo on 10/21
- Amateur Radio Classes continue on Thursday evenings, 6-8pm, 6 students
- IEMA County Call Update with IEMA Deputy Director via Zoom, Monthly
- ILEAS Meetings twice a month
- ARES Region 3 & 4 DEC meeting on the 3<sup>rd</sup> Tuesday of each month via Zoom
- UCP team lead meeting monthly.
- State Broadband meeting monthly.
- State radio “Stakeholders” meeting monthly.
- Planning the formation of an ARES group here in Kendall County. More to come on this.
- Volunteer meeting was held on October 16<sup>th</sup>. Training topics included NQS and training expectations

Kendall County Economic Development Commission  
 Loan Status  
 10/31/2023

Account Name	Last Pymt	A Monthly Payment		Interest Rate	B Total Paid		D Principal Balance	E Bank Totals	
	Loan Date	Principal	Interest		Principal	Interest		Interest Earned	Bank Balance includes I earned
Surplus - EDC BB #815-535								446,085.24	977,959.88
<u>Law Office Corporation</u> Payment: #91	10/2/2023	104.34			480.67	98.38			
Loan Status: Midland State Bank	3/11/2015	450.56 <u>120,000.00</u> 120,450.56		1.50%	36,133.13	11,410.61	84,317.43	123.55	47,667.29
<u>Lucky's Beef N Dogs</u> Payment: #48	10/12/2023	225.00			164.96	60.44			
Loan Status: BB 286	5/23/2017	32,086.20		2.90%	7,406.02	3,243.98	24,680.18		12,541.96
<u>Grace Holistic Center for Education</u> Payment: #32	10/31/2023	1,332.63			1,154.66	177.97			
Loan Status: Midland State Bank	5/1/2021	100,000.00		3.25%	35,443.23	7,200.93	64,556.77	46.06	42,690.22
<u>Camp Mutty Paws</u> Payment: #18	10/24/2023	727.10			572.31	127.69			
Loan Status: Midland State Bank	5/1/2022	54,100.00		3.50%	10,893.81	2,570.09	43,206.19	10.08	13,473.98
Minooka Water Project	2/7/2023			1.00%					750,000.00
<b>Total Loan Statuses</b>		306,636.76			89,876.19	24,425.61	216,760.57	446,208.79	1,844,333.33

Total Assets (D +E) 2,061,093.90



## **Kendall Area Transit ADA Transportation Policy**

### **Purpose**

It is the goal of the Kendall Area Transit (KAT), through its public transit services, to design, implement, and maintain a safe, efficient, effective, and accessible transportation system for persons with disabilities. KAT works to ensure nondiscriminatory transportation to enhance the social and economic quality of life for all people of the communities we serve.

### **Policy**

It is the policy of KAT to abide by all provisions of the Americans With Disabilities Act (ADA) of 1990, as amended, and US Department of Transportation (DOT) regulations found at 49 CFR Parts 27, 37, and 38, as amended, in the delivery of transit services that are open to the public and prohibits discrimination on the basis of disability and sets specific requirements that transit agencies must follow.

### **Wheelchair Definition**

For the purposes of this policy a wheelchair is defined as a three-or-more wheeled mobility aid device, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered.

With respect to the size and weight of wheelchairs, KAT will transport a wheelchair and its user, as long as the lift can accommodate the size and weight of the passenger and the wheelchair, and there is space for the wheelchair on the vehicle. However, KAT is not required to carry a wheelchair if, in fact, the lift or vehicle is unable to accommodate the wheelchair and its user, consistent with legitimate safety requirements according to the lift manufacturers.

### **Transportation of Persons with Disabilities**

The KAT is committed to ensuring safe, efficient, and effective transportation for persons with disabilities, as provided by the ADA and related DOT regulations (both as amended) and will abide by the following:

- KAT's vehicles will be lift equipped and have securement systems for wheelchairs.
- KAT requires that wheelchair users permit their wheelchairs to be secured. Service will not be denied due to VAC's inability to secure a wheelchair. Securement problems of wheelchair shall be reported to the dispatch office.
- KAT will not require a wheelchair user to transfer to another seat.
- KAT staff will provide assistance upon request or as necessary with lifts, ramps, and securement systems.

- Persons with disabilities who do not use wheelchairs will be permitted to use the vehicle lifts or ramps upon request.
- KAT will permit service animals, such as, but not necessarily limited to, service dogs, that have been individually trained to work or perform tasks to accompany persons with disabilities in vehicles and facilities. The service animal must remain under the control of the rider and not present an immediate danger to the driver or other riders. This policy does not include “comfort animals.”
- KAT vehicle operators and other KAT personnel will make use of required accessibility related equipment and features (example: tie-downs will be used to secure a wheelchair on the vehicle).
- KAT will provide service to persons using respirators or portable oxygen. Vehicle operators will properly secure this equipment.
- KAT will ensure adequate time for persons with disabilities to board and/or disembark a vehicle.
- KAT will provide training to dispatchers and vehicle operators about the safe operation of vehicles and accessibility equipment and customer service sensitivity of persons with disabilities.
- KAT vehicle operators will check operation of lifts/ramps and inspect all securement equipment through pre-trip and post-trip inspection procedures on a daily basis. All ADA equipment failures will be reported immediately to dispatch and operations staff.
- KAT will make service information available in accessible formats as requested.
- KAT may refuse service and may contact local police for instances when a passenger engages in violence, is a danger to him- or her-self or others, is seriously disruptive, or is engaged in illegal activities.

### **Reasonable Modification to Policies, Practices, and Procedures**

KAT is committed to providing safe, reliable, courteous, accessible, and user-friendly services to its riders. To ensure equality and fairness, KAT is committed to making reasonable modifications to its policies, practices, and procedures to avoid discrimination and ensure programs and services are accessible to individuals with disabilities. For more information on our reasonable modification procedures, including requesting a reasonable modification or appeal process, please see KAT’s Reasonable Modification Policy.

### **Refusal of Service and Nondiscrimination**

KAT can refuse to provide service to an individual with disabilities if that individual engages in violent, seriously disruptive, or illegal conduct, or represents a direct threat to the health or safety of others. However, KAT will not refuse to provide service to an individual with a disability solely because the individual's disability results in an appearance or behavior that may offend, annoy, or inconvenience KAT staff/employees or other persons.

### **ADA Service Requirements**

The Maintenance and Operations staff are responsible for maintaining all accessible features on agency vehicles including lifts, ramps, securement devices, elevators, signage and systems to facilitate communication.

#### **Interlocks:**

Vehicle interlocks shall be inspected on daily pre and post trip inspections and monthly checks. Vehicles with malfunctioning interlocks shall be taken out of service until repaired.

#### **ADA Equipment Maintenance Schedule:**

The lift maintenance service was modeled after manufactures recommendations. To ensure timely ADA equipment maintenance, standardized procedures, and better track records, all ADA service equipment will be serviced at every vehicle oil change intervals for vehicles housed at the main facility. If a vehicle is housed at a satellite location, the agency shall follow the manufacturer's scheduled recommendations.

### **ADA Complaint Procedures**

The Kendall Area Transit (KAT) is committed to ensuring safe and efficient transportation for persons with disabilities, as provided by the Americans with Disability Act (ADA). Any ADA transportation service complaints received by KAT will be immediately investigated and every effort made to seek an appropriate and prompt resolution. By promptly identifying deficiency areas, KAT will work to make the necessary corrections or adjustments to alleviate the situation.

Any and all ADA Transportation service complaints shall be submitted in writing on the agency's complaint form and returned to the:

Kendall Area Transit  
Administration Department  
111 West Fox Road, Yorkville, IL 60560.

If you would like a copy of this form, or require additional information, please visit the Kendall County website at <https://www.kendallcountyil.gov> or call the Kendall Area Transit Administration Department at (630) 553-4171

## Kendall Area Transit ADA Complaint Procedures and Form

### Policy and Procedures:

The Kendall Area Transit (KAT) is committed to ensuring safe and efficient transportation for persons with disabilities, as provided by the Americans with Disability Act (ADA).

Any ADA transportation service complaints received by Kendall Area Transit will be immediately investigated and every effort made to seek an appropriate and prompt resolution. By promptly identifying deficiency areas, Kendall Area Transit will work to make the necessary corrections or adjustments to alleviate the situation.

All ADA Transportation service complaints shall be submitted in writing on the agency's complaint form and returned to the Kendall Area Transit, Administration Department 111 West Fox Road, Yorkville, IL 60560. Please see the attached form.

The following information is necessary to assist us in processing your complaint. If you require any assistance in completing this form, please contact the Kendall Area Transit, Administration Department (630)553-4171. The completed form must be returned to Kendall Area Transit, Administration Department 111 West Fox Road, Yorkville, IL 60560.

The investigative officer shall maintain a log of ADA complaints received from this process which log shall include the date the complaint was filed, a summary of the allegations, the status of the complaint, and actions taken by Kendall Area Transit in response to the complaint. Should Kendall Area Transit receive an ADA complaint in the form of a formal charge or lawsuit, the agency's attorney shall be responsible for the investigation and maintaining a log as described herein.

**Kendall Area Transit**  
**ADA Complaint Form**

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Alternate Phone: \_\_\_\_\_

Person discriminated against (if someone other than complainant):

Name(s): \_\_\_\_\_

Street Address, City, State & Zip Code: \_\_\_\_\_

Date of Incident: \_\_\_\_\_

Please describe the alleged incident (attach additional pages if needed):

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(Description of incident continued):

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Have you filed a complaint with any other federal, state or local agencies?  Yes  No  
If so, list agency / agencies and contact information below:

Agency: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Street Address, City, State & Zip Code \_\_\_\_\_

Agency: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Street Address, City, State & Zip Code \_\_\_\_\_

**I affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.**

\_\_\_\_\_  
**Complainants Signature** **Date**

Print or type name of complainant: \_\_\_\_\_

**For KAT Use Only**

Date Received: \_\_\_\_\_ Received By: \_\_\_\_\_



**COUNTY OF KENDALL, ILLINOIS**  
**MATT KELLOGG**  
**COUNTY BOARD CHAIRMAN**  
**COUNTY BOARD MEMBER • 2nd DISTRICT**  
**KENDALL COUNTY OFFICE BUILDING**  
**111 WEST FOX STREET, SUITE 316**  
**YORKVILLE, ILLINOIS 60560**  
**630.553.4171**

November 16, 2023

Michael Manfre  
119 Hamlet Circle  
Montgomery, Illinois 60538

James A. Manfre  
119 Hamlet Circle  
Montgomery, Illinois 60538

Priscilla Liberatore  
119 Hamlet Circle  
Montgomery, Illinois 60538

Re: Promissory Note and Mortgage dated May 23, 2017

Dear Michael Manfre, James A. Manfre, Priscilla Liberatore:

As you know, you entered into a promissory note and mortgage on May 23, 2017 with Kendall County. In consideration of a \$32,500.00 loan from Kendall County for the business Lucky's Beef N Dogs, you agreed to repay the loan in monthly installments over six years at 2.9% annual interest, with the first principal and interest payment of \$492.34 due June 1, 2017. If payment was not made by the 15<sup>th</sup> of the month, Kendall County may add a late fee of 5% of the overdue amount of each payment.

This loan was modified effective February 5, 2019. The outstanding balance at that time was \$31,528.53. The modification retained the 2.9% interest rate but extended the repayment term and reduced the monthly payment from \$492.34 to \$225.00.

According to Kendall County's records, you are 17 payments behind on your modified loan repayment. Therefore, as of November 16, 2023, you have a total unpaid balance of **\$30,946.50** (\$26,570.87 in principal, \$4,184.38 in accrued interest, and \$191.25 in late fees) remaining on your loan.

As a result of your payment default and in accordance with paragraph 6 of the note and paragraph 8 of the mortgage, Kendall County now demands immediate payment of the full remaining principal and all accrued interest. If the full amount of **\$30,946.50** is not paid to Kendall County by December 29, 2023, Kendall County may proceed with any and all remedies available to it under the note and mortgage executed on May 23, 2017. Please remit payment to the Kendall County Treasurer, 111 W. Fox Street, Yorkville, Illinois 60560. Please refer all questions regarding this notice to Christina Burns, Kendall County Administrator, (630) 553-4171.

Regards,

Matt Kellogg,  
Kendall County Board Chairman

**Kendall Area Transit  
FTA PROCUREMENT POLICY**

**11/21/2023**



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# 1. INTRODUCTION

## 1.1. Purpose

This policy establishes guidelines and minimum standards that Kendall Area Transit will use in the management of its third party contracts. This manual is intended to ensure that Kendall Area Transit complies with Federal Transit Administration (FTA) and the Illinois Department of Transportation's standards to ensure full and open competition and equitable treatment of all potential sources for all purchases made with funding derived from the Federal, state, and local governments. In all purchasing activity, the goal of Kendall Area Transit is to ensure maximum open and free competition consistent with:

- FTA Circular 4220.1F "Third Party Contracting Guidance" or latest version thereof;
- 2 CFR § 200.317 – 200.326

## 1.2. Applicability

This manual applies to all procurements undertaken and financed, in whole or in part, with FTA financial assistance provided to Kendall Area Transit to support **open market procurements**. An open market solicitation is used to purchase a good or service by soliciting from any available source. Most grantee procurement activity will be undertaken on the open market. Open market procurements exclude:

- Employment Contracts;
- Real Estate Contracts; and
- Intergovernmental Agreements.

The goal of this procurement policy is to provide an atmosphere in which all procurement transactions will be conducted in a manner providing full and open competition. Kendall Area Transit will avoid the following situations considered to be restrictive of competition:

- Application of unreasonable requirements placed on firms in order for them to qualify to do business;
- Imposition of geographic preference standards in the selection of vendors;
- Imposition of unnecessary experience and excessive bonding requirements;
- Use of noncompetitive pricing practices between firms or between affiliated companies;
- Employment of noncompetitive awards to any person or firm on retainer contracts;
- Failure to recognize organizational conflicts of interest, which means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- Use of "brand name" specifications without listing its salient characteristics and not allowing "an equal" product to be offered; and
- Any arbitrary action in the procurement process.

Kendall Area Transit will conduct procurements in a manner that does not give in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not pre-empt Illinois licensing laws from being considered in those disciplines that are regulated by the State of Illinois. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services if an appropriate number of qualified firms, given the nature and size of the project, are able to compete for the contract.

### **1.3. Third Party Contracting Capacity**

FTA regulations (2 CFR § 200.319(c) and FTA Circular 4220.1F, Chapter III, § 3a) requires Kendall Area Transit to have written procurement procedures. This policy is designed to meet FTA and IDOT's requirements in this regard.

### **1.4. Relationship to Other county Policies**

The purpose of these purchasing policies and procedures are two-fold. First, the county has established these policies and procedures to conform to the provisions of Federal procurement regulations that govern the county's use of FTA and IDOT funds. Second, these policies and procedures assure that materials, supplies, services and equipment required for efficient and effective operation of the transit program are procured with regard to an analysis of price, quality, quantity, terms and delivery specifications. These policies and procedures pertain only to the county's purchases made with FTA funds for the transit program; purchases with local funds and for purposes other than transit should follow the applicable Illinois law.

These policies may not answer all questions related to purchasing; if any employee of Kendall Area Transit has a question regarding these procedures, IDOT should be contacted for clarification and guidance.

When Kendall Area Transit undertakes any purchase utilizing FTA funds, this policy shall supersede any existing purchasing policy promulgated by the county. When any conflict exists between this policy and the existing policies of the county, the procedures in this policy shall prevail. If any employee of Kendall Area Transit determines that a conflict exists between these policies and state and local law, Kendall Area Transit shall contact IDOT and communicate the conflict.

## CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

### 1.5. Purpose

Federal grant management rules (2 CFR § 200.318(c)(1)) require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. This policy must address:

- Personal conflicts of interest
- Gifts; and
- Violations.

### 1.6. Definition of Key Terms

As used herein, the following definitions apply:

**Conflict of Interest** – A situation in which an employee, board member, officer, or agent has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. A conflict of interest represents a divergence between a person covered by this policy and their private interests and their professional obligations to the Kendall Area Transit such that an independent observer might reasonably question whether the individual’s professional actions or decisions are determined by considerations of personal gain, financial or otherwise.

**Financial Interest** – An officer, agent, board member, his or her partner, employee, or their immediate family, is considered as having a financial interest in a company if: they receive more than \$10,000 in consulting income, salaries, or equity in the company; they have more than 5 percent equity in the company; they have intellectual property rights in or receive royalties from the company; or they serve as a director, officer, partner, trustee, manager or employee of the company.

**Immediate Family** – Immediate family includes an employee’s spouse, grandparent, parent, brother, sister, child or grandchild, his or her partner.

### 1.7. Applicability

No employee, elected official, agent, or other individual under an employment contract with Kendall Area Transit, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of those previously listed individuals has a financial or other interest in the firm selected for award.

## **1.8. Gifts**

Any contractor, subcontractor, or supplier who has a contract with the county; has performed under such a contract within the past year; or anticipates bidding on such a contract in the future shall be prohibited from making gifts or to providing favors to any individual defined in Section 2.2. who is charged with the duty of:

- Preparing plans, specifications, or estimates for public contract; or
- Awarding or administering public contracts; or
- Inspecting or supervising construction.

Kendall Area Transit also prohibits all covered individuals defined in Section 2.2. who perform the functions listed above from receiving or accepting any such gift or favor.

## **1.9. Employee Conflicts of Interest**

### **1.9.1. Conflicts of Interest**

It shall be a breach of ethical standards for any Kendall Area Transit employee to participate directly or indirectly in a procurement when the employee knows:

- The employee or any member of the employee's immediate family, board member, officer, agent, his or her partner, has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

### **1.9.2. Discovery of Actual or Potential Conflict of Interest (Disqualification and Waiver)**

Upon discovery of an actual or potential conflict of interest, an employee participating directly or indirectly in a procurement shall:

- Promptly file a written statement of disqualification with the code official; and
- Withdraw from further participation in the procurement.

The employee may, at the same time, request from the code official, an advisory opinion as to what further participation, if any, the employee may have in the procurement. It shall be at the sole discretion of the code official to determine if the employee may have any further participation in the procurement and, if so, the extent to which the employee may participate. Any employee who fails to comply with the provisions of this paragraph may be subject to disciplinary action.



### **1.9.3. Employee Disclosure Requirements**

A Kendall Area Transit employee, who has reason to believe that he/she or his/her immediate family have an interest that may be affected by his/her official acts or actions as a Kendall Area Transit employee or by the official acts or actions of Kendall Area Transit, shall disclose the precise nature and value of such interest in a written disclosure statement to the code official. The employee's disclosure statement will be reviewed by the code official and the code official will respond to the employee in writing with an opinion as to the propriety of said interest.

In the event that the code official has reason to believe that he/she or his/her immediate family has an interest that may be affected by his/her official acts or actions as a Kendall Area Transit employee or by the official acts or actions of Kendall Area Transit, he/she shall disclose the precise nature and value of such interest in a written disclosure statement to the second code official.

### **1.9.4. Confidential Information**

A Kendall Area Transit employee may not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, confidential information acquired by virtue of their position or employment with Kendall Area Transit.

### **1.9.5. Solicitation Provision**

Kendall Area Transit shall insert the following provisions in all formal competitive solicitation documents for products and services:

*These policies shall apply to Kendall Area Transit employees involved in procurement. It is a breach of ethical standards for any Kendall Area Transit employee to participate directly or indirectly in a procurement when the employee knows:*

- *The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;*
- *A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or*
- *Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.*

*In addition, any persons acting as members of an evaluation committee for any procurement shall, for the purposes of the procurement, be bound by conditions of this Section. Throughout the bid/proposal evaluation process and subsequent contract negotiations, offerors shall not discuss or seek specific information about this procurement, including but not limited to, the contents of submissions, the evaluation process or the contract negotiations, with members of any evaluation committee, the County of Kendall, or other Kendall Area Transit employees other than the designated procurement officer."*

### **1.10. Organizational Conflicts of Interest**

The procurement officer and technical personnel are encouraged to work closely with the legal counsel to review all situations that appear to have the potential for an organizational conflict of interest.

Organizational conflicts of interest may result in bias and potentially provide an unfair competitive advantage to a potential offeror. An organizational conflict of interest occurs due to the type of work to be performed under a third-party contract, or because of other activities or relationships such as:

- A contractor is unable, or potentially unable, to render impartial assistance or advice to the county;
- A contractor's objectivity in performing contract work is or might otherwise be impaired; or
- A contractor has an unfair competitive advantage.

Bias arises when a contractor is placed in a situation where there may be an incentive to distort advice or decisions. Whenever a contract is awarded that involves the rendering of advice, the question must always be asked as to whether the potential for a conflict of interest exists for the contractor rendering the advice. Kendall Area Transit will utilize a "Conflict of Interest Disclosure Statement," in its solicitation when contracting for services of this nature.

## 2. Kendall Area Transit RESPONSIBILITIES UNDER FEDERAL LAW

### 2.1. Third Party Contracting Capacity

Kendall Area Transit must maintain adequate technical capacity to carry out its FTA assisted projects and comply with Federal rules. Kendall Area Transit 's third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, state, and local requirements.

### 2.2. Contract Administration System

Kendall Area Transit must maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, state and local requirements.

#### 2.2.1. Written Procurement Procedures

Kendall Area Transit must maintain and follow written procurement procedures that address:

- (a) Solicitations – Requirements for Kendall Area Transit solicitations are addressed in Section 5.
- (b) Necessity – Requirements related to Kendall Area Transit 's need for products or services are addressed in Section 3.2.2.
- (c) Lease Versus Purchase – Requirements related to the use of lease or purchase alternatives to achieve an economical and practical procurement are addressed in Section 3.2.2
- (d) Metric Usage – Requirements related to the acceptance of products and services dimensioned in the metric system of measurement are addressed in Section 3.5.2.
- (e) Environmental and Energy Efficiency Preferences – Requirements related to preference for products and services that conserve natural resources, protect the environment, and are energy efficient are addressed in Sections 3.4.3 and 3.4.4.
- (f) Procurement Methods – Descriptions of the procurement methods that Kendall Area Transit may use are included in Section 5.
- (g) Legal Restrictions – Descriptions of Federal and state restrictions on Kendall Area Transit 's acquisitions are included in Section 5.
- (h) Third Party Contract Provisions – Specific third party contract provisions required for each third party contract and flow down requirements to subcontracts are included in Section 3.1 through 3.7.
  - (1) Sources – Descriptions of the availability and use of various sources of products and services are addressed in Section 4.

- (2) Resolution of Third Party Contracting Issues – Procedures related to the resolution of third party contracting issues are included in Section 6.8.

### **2.2.2. Adequate Third Party Contract Provisions**

Kendall Area Transit must include provisions in all of its third-party contracts that are adequate to form a sound and complete agreement.

### **2.2.3. Industry Contracts**

Kendall Area Transit shall not use an industry developed contract or a contract that is provided by a bidder or offeror unless it has first evaluated the benefits of the contract. Kendall Area Transit shall ensure that such contracts include all required Federal provisions but do not include terms and conditions that may be unfavorable to Kendall Area Transit .

### **2.2.4. Revenue Contracts**

Kendall Area Transit may enter into a revenue contract with a third party to generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. Any such said contract opportunity will follow a competitive selection procedures and principles outlined herein.

### **2.2.5. Record Keeping**

Kendall Area Transit must prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. Kendall Area Transit must maintain these records for five (5) years after Kendall Area Transit and its subrecipients, if any, have made final payment and all other pending matters are closed. Specific record keeping requirements include:

- (a) Written Record of Procurement History – Kendall Area Transit must maintain and make available to IDOT and FTA written records detailing the history of each procurement. For all procurements above the micro-purchase level Kendall Area Transit must maintain records relating to:
- (1) Procurement Method – Kendall Area Transit must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive;
  - (2) Contract Type – Kendall Area Transit must state the reasons for selecting the contract type it used;
  - (3) Contractor Selection – Kendall Area Transit must state its reasons for contractor selection or rejection;
  - (4) Contractor Responsibility – Kendall Area Transit must provide a written determination of responsibility for the successful contractor;
  - (5) Cost or Price – Kendall Area Transit must evaluate and state its justification for the contract cost or price; and

- (6) Reasonable Documentation – Kendall Area Transit must retain documentation commensurate with the size and complexity of the procurement.
  - (7) Vendor Verification – Kendall Area Transit must include verification of acceptance with a selected vendor/supplier/manufacturer through the Federal System of Award Management (SAM) for each project and associated project file.
- (b) Access to Records – Kendall Area Transit must provide FTA and IDOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance.
- (c) Use of Technology/Electronic Commerce – Kendall Area Transit may use an electronic commerce system to conduct third party procurements. If Kendall Area Transit uses an electronic commerce system, then the following requirements apply:
- (1) Sufficient System Capacity – Kendall Area Transit 's system must have sufficient system capacity necessary to accommodate all Federal requirements for full and open competition.
  - (2) Written Procedures – Before any solicitation takes place, Kendall Area Transit must establish adequate written procedures to ensure that all information FTA/IDOT requires for project administration is entered into the system and can be made readily available to IDOT as needed.

### **2.3. Determination of Needs**

Kendall Area Transit must maintain and follow adequate procedures for determining the types and amounts of products and services it needs to acquire. Kendall Area Transit shall comply with the following requirements when determining the types and amounts of products and services it needs to acquire:

### **2.4. Eligibility**

All products and services to be acquired with FTA funds must be eligible under the Federal law authorizing the FTA assistance award and any regulations thereunder. All products and services to be acquired with FTA funds must also be eligible for support within the scope of the underlying grant or cooperative agreement from which the FTA assistance to be used is derived.

### **2.5. Necessity**

Kendall Area Transit shall adhere to the following standards for avoiding the purchase of duplicative and/or unnecessary products and services it does not need.

#### **2.5.1. Unnecessary Reserves**

Kendall Area Transit shall limit the acquisition of Federally-assisted property and services to the amount it needs to support its operations.

### 2.5.2. Acquisition for Assignment Purposes

Kendall Area Transit shall contract only for its current and reasonably expected public transportation needs and shall not add quantities or options to third party contracts solely to permit assignment to another party at a later date. These limits on assignments, however, do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for smaller procurements.

- (a) General Prohibition – Kendall Area Transit may contract only for its current and reasonably expected public transportation needs and may not add quantities or options to third party contracts solely to permit assignment to another party at a later date.
- (b) Changes in the Recipient’s Needs – IDOT and FTA recognize that the quantity of property or services a recipient reasonably believes it may need at the time of contract award may change. Kendall Area Transit 's later needs might decrease due to changed circumstances or honest mistakes. In those situations, Kendall Area Transit may assign its unneeded contract authority to another entity that would like to acquire the property or services.
- (c) Exceptions – These limits on assignments, however, do not preclude:
  - (1) Joint Procurements – Kendall Area Transit and one or more other FTA recipients may enter into a single procurement at the same time to obtain advantages unavailable for smaller procurements.
  - (2) Participation in IDOT Sponsored Vehicle Procurements – Kendall Area Transit may enter into contracts developed by the State of Illinois to acquire vehicles.
- (d) Procurement Size – For every procurement, Kendall Area Transit shall consider whether to consolidate or break out the procurement to obtain the most economical purchase. Absent efforts to foster greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms and women’s business enterprises, Kendall Area Transit shall not split a larger procurement merely to gain the advantage of micro-purchase or small purchase procedures.
- (e) Options – Kendall Area Transit shall justify, as needed, all option quantities included in every solicitation and contract. An option is a unilateral right in a contract by which, for a specified time, Kendall Area Transit may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.
- (f) Lease Versus Purchase – Kendall Area Transit shall review lease versus purchase alternatives for acquiring property and shall prepare or obtain an analysis to determine the most economical alternative. If Kendall Area Transit chooses to lease an asset then it must prepare a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset.

- (g) Specifications – Kendall Area Transit 's procurement specifications shall clearly describe the products or services to be procured and shall state how the proposals will be evaluated. Kendall Area Transit 's procurement specifications shall not be exclusionary, discriminatory, unreasonably restrictive or otherwise in violation of Federal or Illinois laws or regulations.

## **2.6. Contractor Responsibilities**

Kendall Area Transit , in awarding contracts, financed in whole or in part, with FTA financial assistance, shall follow guidance in this section to evaluate contractor capabilities to perform the contract.

In addition to the Federal rules (2 CFR § 200.318(h)) that require contract awards be made only to responsible contractors, Federal transit law at 49 U.S.C. § 5325(j) limits third party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, Kendall Area Transit must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

### **2.6.1. Debarment and Suspension**

Debarment and suspension regulations and guidance include the following provisions.

#### **2.6.1.1. DOT Debarment and Suspension Regulations**

U.S. Department of Transportation (DOT) regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200 apply to each third party contract at any tier of \$25,000 or more, to each third party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third party contract at any tier that must be approved by an FTA official irrespective of the contract amount (2 CFR § 1200). Kendall Area Transit shall apply DOT’s debarment and suspension requirements to itself and each third-party contractor at every tier to the extent required by DOT’s regulations that incorporate the requirements of Office of Management and Budget (OMB), “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)” (2 CFR § 180).

#### **2.6.1.2. System for Award Management**

The System for Award Management (SAM) combines Federal procurement systems and the Catalog of Federal Domestic Assistance into one new system. SAM includes the functionality from the following systems:

- Central Contractor Registry (CCR)
- Federal Agency Registration (Fedreg)
- Online Representations and Certifications Application
- Excluded Parties List System (EPLS)

At its discretion, Kendall Area Transit may collect a debarment and suspension certification from the prospective third party contractor or include a clause in the third party contract requiring disclosure. Additionally, it shall be the policy of Kendall Area Transit to verify that the prospective third party vendor is not listed as a debarred contractor on SAM.

### **2.6.2. Lobbying Certification and Disclosure**

If a third-party contract will exceed \$100,000, before awarding the contract, Kendall Area Transit will obtain a lobbying certification, and if applicable, a lobbying disclosure from a prospective third party contractor (see DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352).

### **2.6.3. Additional Requirements**

In addition to the requirements outlined above, there are various requirements that may apply to Kendall Area Transit’s third-party contracts, depending upon the type of procurement and the anticipated dollar value of said contract. It is the responsibility of Kendall Area Transit to assess each procurement and determine the applicable FTA third party terms and conditions that should be included in the solicitation and contract documents. FTA Circular 4220.1F, Appendix D, has a matrix stipulating these conditions. These conditions may include:

- Federal Civil Rights Laws and Regulations
  - Federal Equal Employment Opportunity (EEO) Requirements
  - Nondiscrimination on the Basis of Sex
  - Nondiscrimination on the Basis of Age
  - Nondiscrimination in Federal Public Transportation Programs
  - Title VI of the Civil Rights Act
  - Environmental Justice
  - Limited English Proficiency (LEP)
  - Nondiscrimination on the Basis of Disability
- Socio-Economic Development Regulations
  - Disadvantaged Business Enterprises (DBE)
  - Small and Minority Firms and Women’s Business Enterprises
  - Sensitive Security Information
  - Seat Belt Use
- Socio-Economic Requirements for the Acquisition of Property and Services
  - Labor Regulations
    - Wage and Hour Requirements
    - Fair Labor Standards
- Environmental Protections
  - Environmental Mitigation
  - National Environmental Policy Act (NEPA)
    - Protections for Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites
    - Clean Air
    - Clean Water



- Recycled Products
  - Other Federal Environmental Protection Requirements
- Energy Conservation
- Preference for U.S. Property--Buy America
- Shipments of Property--U.S. Flag Requirements
  - Shipments by Ocean Vessel
  - Shipments by Air Carrier
  - Project Travel--Use of U.S. Flag Air Carriers
- Technical Restrictions on the Acquisition of Property and Services
  - Intelligent Transportation Systems (ITS)
  - Metric Measurements
  - Use of \$1 Coins
- Rolling Stock--Special Requirements
  - Accessibility
  - Transit Vehicle Manufacturer Compliance with DBE Requirements
  - Minimum Service Life
  - Spare Ratios
  - Air Pollution and Fuel Economy
  - Pre-award and Post Delivery Review
  - Bus Testing
  - In-State Dealers
  - Basis for Contract Award
  - Five-Year Limitation
- Public Transportation Services—Special Requirements
  - Protections for Public Transportation Employees
  - Drug and Alcohol Testing
  - Accessibility
  - Charter Service Restrictions
  - School Bus Restrictions
- Construction – Special Requirements
  - Bonding
  - Bid Guarantee
  - Performance Bond
  - Payment Bond
  - Anti-Kickback
  - Construction Safety
  - Labor Neutrality
  - Prevailing Wages
- Other Required Provisions
  - Trafficking in Persons
  - Federal Tax Liability and Recent Felony Convictions
  - Prohibition on Certain Telecommunications and Video Surveillance Services and Equipment
  - Program Fraud and False or Fraudulent Statements and Related Acts

## **2.7. Bonding**

Some procurements may require Kendall Area Transit to require the vendor to submit a bid bond, performance bond, or payment bond (typically construction projects). When bonding is required, the following conditions will apply.

### **2.7.1. Thresholds**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, IDOT may accept the bonding policy and requirements of the county provided that IDOT has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

#### **2.7.1.1. Bid Guarantee**

A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

#### **2.7.1.2. Performance Bond**

A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.

#### **2.7.1.3. Payment Bond**

A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **2.7.2. Acceptable Sureties**

Federal rules for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” (31 CFR Part 223). For a current list of approved sureties, see Department of the Treasury’s Listing of Approved Sureties (Department Circular 570). As FTA encourages governmental recipient to require similarly acceptable sureties, it shall be the policy of Kendall Area Transit to such accept sureties.

### **2.7.3. Reduced Bonding**

Kendall Area Transit recognizes that bonding costs can be expensive. Kendall Area Transit will accept a local bonding policy that conforms to the minimums described in Section 3.4.1. If bonding levels are sought at levels less than these amounts, Kendall Area Transit must obtain the prior approval of

IDOT/FTA. IDOT/FTA shall approve such requests only if it determines that Kendall Area Transit 's bonding policy adequately protects the Federal interest in the project.

#### **2.7.4. Excessive Bonding**

Kendall Area Transit will adhere to FTA's rules on excessive bonding requirements (FTA Circular 4220.1F, Chapter IV, § 2h(1)(f)). However, if Kendall Area Transit determines it has a material risk of loss because of a failure of the prospective contractor, bonding requirements may exceed those outlined in Section 3.7.1 only with the prior approval of IDOT/FTA.

#### **2.8. Veterans Preference**

As provided by 49 U.S.C. § 5325(k), Kendall Area Transit shall ensure that contractors working on a capital project funded using Federal financial assistance give a hiring preference, to the extent practicable, to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

#### **2.9. Preference for U.S. Manufactured Products -- Build America, Buy America**

Buy America regulations require that all iron, steel, and manufactured products used in an FTA project are produced in the United States. Vehicle purchases are included in the category of manufactured products. Originally, the iron and steel requirements applied to all construction materials made primarily of steel or iron used in infrastructure projects.

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA or the Bipartisan Infrastructure Law), Pub. L. No. 117-58, which includes the Build America, Buy America Act (BABA). IIJA div. G §§ 70901-27.

Specifically, BABA expands the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. BABA requires that no later than May 14, 2022—180 days after the date of enactment—the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure ... may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” IIJA § 70914(a).

BABA provides that the preferences under Section 70914 apply only to the extent that a domestic content procurement preference as described in Section 70914 does not already apply to iron, steel, manufactured products, and construction materials. IIJA § 70917(a)–(b). This provision allows Federal agencies to preserve existing Buy America policies and provisions that meet or exceed the standards required by BABA.

One of the new Buy America preferences included under BABA is for construction materials. By May 14, 2022, each covered Federal agency must ensure that all manufacturing processes for construction materials used in federally assisted infrastructure projects occur in the United States. None of the specific statutes that apply particular Buy America requirements to the Federal financial assistance programs administered by DOT's Operating Administrations specifically covers construction materials, other than to the extent that such materials would already be considered iron, steel, or manufactured products. IIJA § 70914.

### **2.9.1. Application of Build America, Buy America Preference**

By May 14, 2022, agencies must ensure that all applicable programs comply with section 70914 of the Act, including by the incorporation of a Buy America preference in the terms and conditions of each award with an infrastructure project.<sup>1</sup> The Act requires the following Buy America preference:

(1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

(3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.<sup>2</sup>

### **2.9.2. Waivers of Build America, Buy America Requirements**

#### **2.9.2.1 Waiver based on time of award:**

(1) DOT is waiving the BABA construction materials requirements for any contracts entered into before November 10, 2022. Second, DOT is waiving the BABA construction materials requirements for any contracts entered into before March 10, 2023, that result from solicitations published before May 14, 2022. For contracts executed after May 14, 2022, the waiver does not apply to any construction materials that a contractor or subcontractor takes delivery of on or after October 1, 2024.

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<sup>1</sup> IIJA, § 70923(a) & (b)(1).

<sup>2</sup> IIJA, § 70912 (2) & (6)(B)(ii)

The waiver is applicable to awards that are obligated on or after January 30, 2023. For awards that are obligated on or after November 10, 2022, but prior to January 30, 2023, this waiver is applicable to expenditures for construction materials incurred on or after January 30, 2023. For contracts executed after May 14, 2022, the waiver does not apply to any construction materials that a contractor or subcontractor takes delivery of on or after October 1, 2024.

#### **2.9.2.2. Small Purchase Waiver**

Total purchases less than the current small purchase threshold of \$150,000 are not required to apply Buy America provisions. FTA applies Buy America rules based on total allowable purchases costs. This means that all costs of a purchase, even those not subject to Buy America rules, such as labor, are considered in the total value of a purchase to determine if Buy America rules apply to the purchase.

#### **2.9.2.3 Rolling Stock Waiver**

When procuring rolling stock, this waiver allows for the cost of the components and subcomponents produced in the United States to be more than 70% rather than all of the cost of all components of the rolling stock, for fiscal year 2020 and after.

#### **2.9.2.4 Microprocessor Waiver**

Microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data have a general public interest waiver. The waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.

#### **2.9.2.5 Public Interest Waiver for De Minimis Costs and Small Grants**

Effective for awards obligated or sub awards made after August 16, 2023, the USDOT issued a waiver for de minimis costs and small grants. That is, the waiver considers only total Buy America applicable project cost— the cost of materials (including the cost of any manufactured products) used in the project that are subject to a domestic preference requirement, including materials that are within the scope of an existing waiver. The waiver is applicable to subawards only if the subawards are made by a pass-through entity for a specific project.

A project may qualify for the BABA Public Interest Waiver in one of two categories:

**De Minimis Cost Waiver:** This portion allows for a waiver of Buy America preference on the total value of non-compliant products if their value is not more than the lesser of \$1,000,000 or 5 % of total applicable costs for the project.

**Small Grants Waiver:** This portion allows for a waiver of construction costs on a project if the total amount of Federal financial assistance applied to the project, through awards or subawards, is below \$500,000.

### **2.9.3. Notifying Potential Third-Party Contractors of BABA Requirements**

Where applicable, Kendall Area Transit must include appropriate terms and conditions in all solicitations and awards, in accordance with applicable legal requirements and its established procedures, in order to effectuate the requirements of the Act and this guidance. That is, in addition to the Buy America clause regarding iron, steel, and manufactured projects that has been required by FTA for years, Kendall Area Transit must now also provide applicants for infrastructure projects fair notice of the Buy America conditions that will apply to funds granted under the federal award.

*The following is sample language to be included in all infrastructure solicitations and awards:*

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

(1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

(2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

(3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

## **2.10. Accessibility**

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR § 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR § 1192 and 49 CFR § 38. Notably, DOT incorporated by reference the ATBCB’s “Americans with Disabilities Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

## **2.11. Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment**

2 CFR § 200.216 prohibits FTA recipients from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. The effective date for the current rule prohibiting these purchases was August 13, 2020.

Covered and prohibited telecommunications equipment or services refers to certain brands owned or controlled by the government of the People’s Republic of Chinese, including the following:

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Kendall Area Transit will not purchase covered equipment, and will include the corresponding clause in all solicitations and third party contracts.

## **3. SOURCES OF ACQUISITIONS**

### **3.1. Force Account**

Force account means use of Kendall Area Transit 's own labor forces and equipment to undertake a project (typically construction, renovation, or repair). The use of force account labor is a project management function, rather than a procurement and contract administration function, except in the general sense of the county's ability to perform work with its own forces rather than contracting with another entity to acquire the property or services it needs, and the cost implications of the recipient's decision. Kendall Area Transit does not charge force account labor to its FTA grants.

### **3.2. Joint Procurements**

Kendall Area Transit may participate in joint procurements whereby Kendall Area Transit and one or more other entities agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of products or services. The following requirements apply to Kendall Area Transit 's participation in joint procurements:

- Solicitation documents may not be drafted for the purpose of accommodating the needs of other parties that may later want to participate in the benefits of the contract.
- Kendall Area Transit is responsible for ensuring that the joint procurement solicitation and contract complies with all Federal requirements and that the solicitation document and contract includes all required clauses and certifications.

### **3.3. State or Local Government Purchasing Schedules or Purchasing Contracts**

#### **3.3.1. Definition**

FTA uses the term "state or local government purchasing schedule" to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the General Services Administration's (GSA) Cooperative Purchasing Program available for Federal Government use.

#### **3.3.2. Applicability of Federal Provisions**

When obtaining property or services in this manner, Kendall Area Transit 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 recipient's purchase document. While IDOT takes all precautions to ensure that such provision are in the original solicitation and contract



documents, it is ultimately Kendall Area Transit 's responsibility to ensure such documents and certifications are obtained.

If such requirements, clauses, and certifications were not included in the original purchase solicitation and contracts, Kendall Area Transit may request the vendor to append the required Federal clauses in the purchase order or other document that effects the Kendall Area Transit 's procurement. When this method is used, Kendall Area Transit shall obtain Buy America certification before entering into the purchase order. This method cannot be used to circumvent FTA's Buy America requirements.

### **3.3.3. Federal Supply Schedules**

Purchases by Kendall Area Transit from Federal Supply Schedules established by the U.S. General Services Administration (GSA) are limited to the purchase of information technology (IT) products and to products and services to facilitate recovery from a major disaster. The following requirements apply to Kendall Area Transit purchases from GSA schedules:

- Kendall Area Transit is authorized to use GSA schedules for purchases of products and services to facilitate recovery from a major disaster that is declared by the President of the United States. Upon declaration of a major disaster by the President, Kendall Area Transit may purchase products and services from GSA schedules both in advance and in the aftermath of the emergency event. Kendall Area Transit shall be responsible for ensuring that the products and services acquired will only be used for recovery.
- Kendall Area Transit must ensure that all Federal requirements, required clauses and certifications are properly followed and included, whether in the master intergovernmental contract or Kendall Area Transit 's purchase document.
- Kendall Area Transit is required to evaluate the reasonableness of prices obtained from GSA schedules. GSA schedule pricing may not be used as a sole or single source for procurement. Kendall Area Transit may only use GSA schedule pricing as one of multiple pricing sources solicited in accordance with its requirements for small purchases described in Section 5.

### **3.3.4. Existing Contracts**

Kendall Area Transit may use existing contract rights as an acquisition source. An "existing contract" means a contract that, when formed, was intended to be limited to the original parties thereto.

#### **3.3.4.1. Permissible Actions**

Within the conditions set forth below, Kendall Area Transit may use existing contract rights held by another recipient of FTA assistance:

- (a) Exercise of Options – Kendall Area Transit may use contract options held by another recipient of FTA assistance with the following limitations:

- (1) Consistency with the Underlying Contract – Kendall Area Transit must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.

- (2) Price – Kendall Area Transit may not exercise an option unless it has determined that the option price is better than prices available in the open market, or that when it intends to exercise the option, the option is more advantageous.
  - (3) Awards Treated as Sole Source Procurements – The following actions constitute sole source awards:
    - i. Failure to Evaluate Options Before Awarding the Underlying Contract – If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
    - ii. Negotiating a Lower Option Price – Exercising an option after Kendall Area Transit has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured.
- (b) Assignment of Contract Rights (“Piggybacking”) – If Kendall Area Transit finds that it has inadvertently acquired contract rights in excess of its needs, it may assign those contract rights to another IDOT subrecipient if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. Kendall Area Transit may use contractual rights through assignment from another recipient of FTA assistance after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. Kendall Area Transit need not perform a second price analysis if a price analysis was performed for the original contract; however, Kendall Area Transit must determine whether the contract price or prices originally established are still fair and reasonable before using those rights. Kendall Area Transit shall be responsible for ensuring the contractor’s compliance with FTA’s Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. Before proceeding with the assignment, however, Kendall Area Transit shall review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities that Kendall Area Transit seeks, do not exceed the amounts available under the assigning recipient’s contract.

#### **3.3.4.2. Impermissible Actions**

Kendall Area Transit may not use Federal assistance to finance:

- (a) Improper Contract Expansion – A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the recipient’s reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.

- (b) Cardinal Changes – A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change or “tag-on”. A change within the scope of the contract is not a cardinal change or “tag-on”.

### **3.4. The Open Market**

Kendall Area Transit will acquire most of the property and services it needs through procurements in the open market using procedures described in Section 5 of this Manual.

## **4. PROCEDURES FOR OPEN MARKET PROCUREMENTS**

### **4.1. Solicitation of Competitive Price Quotes, Bids or Proposals**

Compliance with the solicitation procedures described in Section 5.4 below will fulfill FTA requirements for “full and open competition.”

### **4.2. Receipt and Evaluation of Unsolicited Proposals**

Kendall Area Transit may enter into contracts based on an unsolicited proposal when authorized by applicable State law or regulation. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, Kendall Area Transit must seek competition. To satisfy the requirement for full and open competition, Kendall Area Transit must take the following actions before entering into a contract resulting from an unsolicited proposal:

- Publicize its receipt of the unsolicited proposal;
- Publicize an adequate description of the products or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought;
- Publicize its interest in acquiring the products or services described in the proposal;
- Provide an adequate opportunity for interested parties to comment or submit competing proposals; and
- Publicize its intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

If it is impossible to describe the products or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought, Kendall Area Transit may make a sole source award to the offeror. A sole source award may not be based solely on the unique capability of the offeror to provide the specific products or services proposed.

### **4.3. Prequalification**

Kendall Area Transit may prequalify bidders, offerors, and products for procurement purposes; however, Kendall Area Transit is not required to do so. The decision of whether to require prequalification for eligibility to participate in procurement shall be made separately for every procurement and shall be approved by the Kendall County .

If Kendall Area Transit opts to prequalify bidders, offerors, and products for procurement purposes, the following conditions apply:

- Kendall Area Transit must ensure that all prequalification lists it uses are current;

- Kendall Area Transit must ensure that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition; and
- Kendall Area Transit must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). Kendall Area Transit is not required to hold a particular solicitation open to accommodate a potential supplier that submits products for approval before or during that solicitation nor must Kendall Area Transit expedite or shorten prequalification evaluations of bidders, offerors, or products presented for review during the solicitation period.

#### **4.4. Solicitation Requirements and Restrictions**

Every procurement solicitation that Kendall Area Transit issues above the micro-purchase level (currently established in Federal guidance at \$10,000), must include the following information and be advertised in a manner that ensures adequate and open competition.

##### **4.4.1. Statement of Federal Assistance**

Pursuant to Circular 4220.1F, Chapter III, § 3e, all RFPs, solicitations, press releases or other publications involving FTA assistance must state that FTA is or will be providing Federal assistance for the project, the amount of the assistance FTA has provided or expects to provide, and the Catalogue of Federal Domestic Assistance (CFDA) Number of the program that authorizes Federal assistance. Note: this notification requirement applies only to States and their subrecipients, lessees, and third party contractors. The current Master Agreement will define the notification requirements that are currently in effect, as they may change from year to year.

##### **4.4.2. Description of the Property or Services**

The solicitation and the contract awarded thereunder must include a clear and accurate description of Kendall Area Transit 's technical requirements for the products or services to be acquired in a manner that provides for full and open competition.

###### **4.4.2.1. Descriptive Elements**

Kendall Area Transit will prepare descriptions of property, goods, or service in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product specifications should be avoided if at all possible; however, there is no prohibition against their use when appropriate.

###### **4.4.2.2. Quantities**

Additional quantities or options above Kendall Area Transit 's needs at the time of acquisition may not be added to contracts solely to allow assignment of those quantities or options at a later date.

###### **4.4.2.3. Brand Name or Equal**

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a “brand name or equal” description may be used to define the performance or other salient characteristics of a specific type of property. The salient characteristics of the named brand that bidders or offerors must provide must be identified.

#### 4.4.2.4. Prohibited Practices

Solicitations with requirements that contain features that unduly restrict competition may not be used. Kendall Area Transit shall not:

- Impose unreasonable business requirements for bidders or offerors.
- Impose unnecessary experience requirements for bidders and offerors.
- Use prequalification procedures that conflict with the prequalification standards described in Section 5.3.
- Make a noncompetitive award to any person or firm on a retainer contract with Kendall Area Transit if that award is not for the property or services specified for delivery under the retainer contract.
- Impose unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.
- Specify only a “brand name” product without allowing offers of an “equal” product, or allowing an “equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
- Specify in-state or local geographical preferences, or evaluating bids or proposals in light of in-state or local geographical preferences, even if those preferences are imposed by State or local laws or regulations. The only exception expressly mandated or encouraged by Federal law that may be applicable to Kendall Area Transit is the procurement of Architectural and Engineering (A&E) Services. Geographic location may be a selection criterion in the procurement of A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
- Engage in practices that result in organizational conflicts of interest. An organizational conflict of interest occurs when any of the following circumstances arise:
  - Lack of Impartiality or Impaired Objectivity – When the bidder or offeror is unable, or potentially unable, to provide impartial and objective assistance or advice to Kendall Area Transit due to other activities, relationships, contracts, or circumstances.
  - Unequal Access to Information – When the bidder or offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
  - Biased Ground Rules – When during the conduct of an earlier procurement, the bidder or offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- Support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.
- Take any arbitrary action in the procurement process.

#### **4.4.3. Evaluation Factors.**

All solicitations issued by shall identify all factors to be used in evaluating bids or proposals. At the discretion of Kendall County , the relative order of importance and/or weights may be communicated to prospective offerors.

#### **4.4.4. Permissible Contract Types**

Kendall Area Transit shall state the type of contract that will be awarded in all solicitation documents. The following types of contracts will typically be executed with the successful vendor:

##### **4.4.4.1. Firm Fixed Price**

A firm fixed price contract includes a price that remains fixed irrespective of the contractor's cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.

##### **4.4.4.2. Cost Reimbursement**

A cost-reimbursement contract provides for payment of the contractor's allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if the recipient believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

#### **4.4.5. Prohibitive or Restricted Contract Types**

The following contract types are prohibited or restricted:

##### **4.4.5.1. Cost Plus Percentage of Cost**

Cost plus Percentage of Cost type contracts are prohibited.

##### **4.4.5.2. Time and Materials**

Time and Materials type contracts may be used only after a written determination is made that no other contract type is suitable. In addition, the contract between Kendall Area Transit and the Contractor must specify a ceiling price that the Contractor may not exceed except at its own risk.

#### **4.4.6. Other Federal Requirements Affecting the Property or Services to be Acquired**

The solicitation and resulting contract must identify those Federal requirements that will affect contract scope and performance.

#### **4.4.7. Other Federal Requirements Affecting the Bidder or Offeror and the Contractor**

The solicitation and resulting contract must identify all Federal requirements that a bidder or offeror must fulfill before and during contract performance.

#### **4.4.8. Reservation of Right to Award to Other Than the Low Bidder or Offeror**

The solicitation must specifically reserve Kendall Area Transit right to award a contract to other than the low bidder or offeror. If the solicitation documents do not specify this right, Kendall Area Transit will be obligated to award the contract to the low bidder.

#### **4.4.9. Reservation of Right to Reject All Bids or Offers**

The solicitation must specifically reserve Kendall Area Transit 's right to reject all bids or offers.

### **4.5. Methods of Procurement**

Kendall Area Transit shall use competitive procedure(s) appropriate for the acquisition undertaken. The procedures used must comply with Illinois and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of 2 CFR § 200.318 – 200.326, supplemented by FTA policies that address the needs of FTA recipients.

#### **4.5.1. Micro-Purchases**

##### **4.5.1.1. Definition**

Micro-purchases are those purchases of products and services that cost \$10,000 or less, as defined by 2 CFR §200.67 (or current threshold established by Federal Acquisition Regulations (FAR)); for purposes of this policy, Kendall Area Transit will use «MicroThreshold» as the threshold for relatively simple purchases as a means to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

##### **4.5.1.2. Approval Authority**

Micro-purchases must be approved in writing by one of the following Kendall Area Transit employees:

- «Micro\_Approval1»; or
- «Micro\_Approval2».

##### **4.5.1.3. Competition**

Kendall Area Transit may acquire products and services valued at less than «MicroThreshold» without obtaining competitive quotations. Micro-purchases should be distributed equitably among qualified suppliers.



Micro purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures.

#### **4.5.1.4. Prohibited Divisions**

The size or dollar value of procurements may not be divided or reduced merely to come within the micro purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms and women's business enterprises in Kendall Area Transit 's Federally-assisted procurements.

#### **4.5.1.5. Documentation**

Every micro-purchase must be accompanied by a written determination that the price is fair and reasonable and a description of how that determination was made.

### **4.5.2. Small Purchases**

#### **4.5.2.1. Definition**

FTA defines small purchases are those purchases of products and services, including construction services, that cost greater than \$10,000 but not more than \$250,000. For purposes of this policy, Kendall Area Transit will consider small purchase those that cost greater than «MicroThreshold» but not more than «Small\_Threshold».

#### **4.5.2.2. Approval Authority**

Small purchases must be approved in writing by one of the following Kendall Area Transit employees:

- «Small\_Approval1»; and/or
- «Small\_Approval2».

#### **4.5.2.3. Required Competition**

Price or rate quotations must be obtained from an adequate number of qualified sources. It is the responsibility of Kendall Area Transit to ensure that an adequate number of quotations, bids, or proposals are received

#### **4.5.2.4. Prohibited Divisions**

The size or dollar value of procurements may not be divided or reduced merely to come within the small purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms and women's business enterprises in Kendall Area Transit 's Federally-assisted procurements

#### **4.5.2.5. Documentation**

Every small purchase must be documented in the grantee's written procurement history file. The level of documentation is stipulated in Section 6.6.1.

For small purchases, price quotations may be oral or written.

#### **4.5.2.6. Special Considerations**

Kendall Area Transit may acquire products and services directly from State contract vendors in lieu of competitively procuring such products and services itself through the small purchase method of procurement.

Kendall Area Transit reserves the right to use formal purchase methods, even if small purchase thresholds are met, if the Kendall COunty believes it is in the best interests of the Kendall Area Transit to do so.

### **4.5.3. Formal Purchases**

#### **4.5.3.1. Definition**

Formal purchases are those purchases of products and services that cost greater than the current Federal threshold of \$250,000. For purposes of this policy, Kendall Area Transit will use formal procedures for all purchases over «Small\_Threshold».

#### **4.5.3.2. Approval Authority**

Large purchases must be approved in writing by the following Kendall Area Transit employees or officials:

- «Formal\_Approval1»; or
- «Formal\_Approval2».

No further delegation of approval authority for large purchases may be made.

#### **4.5.3.3. Procurement Methods**

There are two primary methods of procurement for large purchases of products and services:

- Sealed Bid method; and
- Competitive Proposal method.

#### **4.5.3.4. Required Competition**

Formal bids and competitive proposals must be publicly advertised.

For formal purchases by the sealed bid method of procurement, two or more responsible bidders must be willing and able to compete effectively for the business.

For formal purchases by the competitive proposal method of procurement, two or more offerors must be willing and able to submit an offer or proposal.

#### **4.5.3.5. Required Documentation**

Every formal purchase must, at a minimum, be supported by a written independent cost estimate, formal bids or proposals, a written cost or price analysis as appropriate, a written justification and detailed rationale for contractor selection (including application of evaluation criteria) and a written determination of the responsibility of the contractor. Additional documentation requirements are dependent upon the formal procurement method that is utilized to make the purchase.

#### **4.5.3.6. Special Considerations**

Kendall Area Transit may acquire products and services via state contract in lieu of competitively procuring such products and services itself through the sealed bid and competitive proposal methods of procurement.

#### **4.5.3.7. Procedural Methods for Sealed Bids**

The sealed bid method of procurement is a formal method in which bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Invitation for Bids (IFB), is lowest in price. The vehicle through which bids are solicited is an IFB. The IFB document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a bid, and the forms on which bids must be submitted.

(a) When Appropriate – The sealed bid method of procurement is the preferred method for acquiring products and services that, including construction services, cost greater than «Small\_Threshold». The sealed bid method of procurement may also be used for small purchases if it is determined to be appropriate. The sealed bid method of procurement is appropriate if the following conditions apply:

- (1) Precise Specifications – A complete, adequate, precise, and realistic specification or purchase description is available.
- (2) Adequate Sources – Two or more responsible bidders are willing and able to compete effectively for the business.
- (3) Fixed Price Contract – The procurement generally lends itself to a firm fixed price contract.
- (4) Price Determinative – The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be

determined on the basis of other factors whose costs cannot be measured at the time of award.

- (5) Discussions Unnecessary – Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.

(b) Requirements for Sealed Bids – The following requirements apply to the sealed bid method of procurement:

- (1) Publicity – The Invitation for Bids must be publicly advertised.
  - i. The Kendall COunty shall ensure that sufficient time is allowed to prepare bids before the date of bid opening.
  - ii. Notice of bidding opportunities may be provided in other ways in addition, but not as a substitute, to a published notice. The methods may include, but not necessarily be limited to:
    - a. Direct notice, based on compiled vendor lists or from pre-qualification list, sent to prospective offerors; or
    - b. Use of advertisement by electronic means.
- (2) Adequate Sources – Bids must be solicited from an adequate number of known suppliers.
- (3) Adequate Specifications – The Invitation for Bids, including any specifications and pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
- (4) Sufficient Time – Bidders must be allowed sufficient time to prepare bids before the date of bid opening.
- (5) Public Opening – All bids must be publicly opened at the time and place prescribed in the Invitation for Bids.
- (6) Fixed Price Contract – A firm fixed price contract must be awarded in writing to the lowest responsive and responsible bidder unless the Invitation for Bids specifically allowed for award of a fixed price incentive contract or the inclusion of an economic price adjustment provision.
- (7) Rejection of Bids – Any or all bids may be rejected if there is a sound, documented business reason.

#### **4.5.3.8. Competitive Proposals**

The competitive proposal method of procurement is a formal method in which written proposals are publicly solicited and a contract is awarded to the responsible offeror whose proposal, taking into consideration price and other factors, is considered to be the most advantageous to Kendall Area Transit or that is considered to be the “best value” to Kendall Area Transit . The vehicle through which proposals are solicited is Request for Proposals (RFP). The RFP document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a proposal and the forms on which proposals must be submitted, if applicable.

- (a) When Appropriate – The competitive proposal method of procurement is appropriate for the acquisition of products and services that cost greater than «Small\_Threshold»

when the nature of the procurement does not lend itself to sealed bidding and Kendall Area Transit expects that more than one source will be willing and able to submit a proposal. The competitive proposal method of procurement may also be used for small purchases if it is determined to be appropriate. The competitive proposal method of procurement may not be used for the procurement of construction services. The competitive proposal method of procurement is appropriate when any of the following circumstances are present:

- (1) Type of Specifications – The products or services to be acquired are described in a performance or functional specification, or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.
- (2) Uncertain Number of Sources – Uncertainty about whether more than one bid will be submitted in response to an Invitation for Bids.
- (3) Price Alone Not Determinative – Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
- (4) Discussions Expected – Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals.

(b) Requirements for Competitive Proposals – The following requirements apply to the competitive proposal method of procurement:

- (1) Publicity – The Request for Proposals must be publicly advertised.
- (2) Evaluation Factors – All evaluation factors and their relative importance must be specified in the solicitation, but numerical or percentage ratings or weights need not be disclosed.
- (3) Adequate Sources – Proposals must be solicited from an adequate number of qualified sources.
- (4) Evaluation Method – A specific method must be established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
- (5) Price and Other Factors – An award must be made to the responsible offeror whose proposal is most advantageous to Kendall Area Transit or that represents the “best value” to Kendall Area Transit with price and other factors considered.
- (6) Best Value – Kendall Area Transit may award a contract to the offeror whose proposal provides the greatest value to Kendall Area Transit. To do so, the solicitation must inform potential offerors that the award will be made on a “best value” basis and identify what factors will form the basis for award. Kendall Area Transit must base its determination of which proposal represents the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

#### **4.5.3.9. Two-Step Procurements**

Kendall Area Transit may use two-step procurement procedures in both sealed bid and competitive proposal procurements, provided the opportunity for full and open competition is retained.

- (a) Review of Technical Qualifications and Approach – The first step is a review of the prospective contractors’ technical approach to Kendall Area Transit 's request and their technical qualifications to carry out that approach followed by the establishment of a competitive range consisting of prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.
- (b) Review of Bids and Proposals Submitted by Qualified Prospective Contractors – The second step consists of soliciting and reviewing complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, bids or proposals must be solicited from at least three qualified prospective contractors.

#### **4.5.3.10. Architectural and Engineering (A&E) Services and Other Services**

FTA’s enabling legislation at 49 U.S.C. § 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the “Brooks Act,” 40 U.S.C. § 1101 through 1104, to acquire A&E services.

- (a) Qualifications-Based Procurement Procedures Required – Kendall Area Transit must use qualifications-based procurement procedures to acquire architectural and engineering (A&E) services as well as certain other services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. In addition to A&E services, other services that must be procured by qualifications-based procurement procedures include:
  - Program management;
  - Construction management;
  - Feasibility studies;
  - Preliminary engineering;
  - Design, architectural, engineering;
  - Surveying, mapping; and
  - Other related services.

The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.

- (b) Qualifications-Based Procurement Procedures Prohibited – Unless FTA determines otherwise in writing, qualifications-based procurement procedures may not be used to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of

real property. Qualifications-based procurement procedures may not be used for actual construction, alteration or repair to real property.

(c) Qualifications-Based Procurement Procedures – The following procedures apply to qualifications-based procurements:

- (1) Qualifications – Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror’s qualifications are evaluated to determine contract award.
- (2) Price – Price is excluded as an evaluation factor.
- (3) Most Qualified – Price negotiations are first conducted with only the most qualified offeror.
- (4) Next Most Qualified - Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

#### **4.6. Procurement by Other Than Full and Open Competition**

Normally, Kendall Area Transit must provide for full and open competition when soliciting bids or proposals. Federal regulations at 2 CFR § 200.320(f)(1) – (4), however, acknowledges that under certain circumstances, a recipient may conduct procurements without providing for full and open competition.

##### **4.6.1. When Appropriate**

Noncompetitive procurement procedures may only be used when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:

###### **4.6.1.1. Competition Adequacy**

After soliciting several sources and receiving an inadequate response, Kendall Area Transit shall review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more price quotes, bids or proposals. If Kendall Area Transit determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, Kendall Area Transit may determine the original competition adequate and complete the purchase from among the sources that submitted a price quote, bid or proposal. A cost analysis must be performed in lieu of a price analysis when this situation occurs.

###### **4.6.1.2. Sole Source**

When Kendall Area Transit requires products or services available from only one responsible source, and no other products or services will satisfy its requirements, Kendall Area Transit may make a sole source award. In addition, when Kendall Area Transit requires an existing

contractor to make a change to its contract that is beyond the scope of that contract, Kendall Area Transit will consider the change a sole source award that must be justified. Sole source awards are only appropriate when one of the following conditions apply:

- (a) Unique Capability or Availability – The products or services are available from only one source if one of the conditions described below is present:
  - (1) Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to Kendall Area Transit only from one source and has not in the past been available to Kendall Area Transit from another source.
  - (2) Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.
  - (3) Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
  - (4) Unacceptable Delay – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling Kendall Area Transit 's needs.
- (b) Single Bid or Proposal – Upon receiving a single bid or proposal in response to a solicitation, Kendall Area Transit should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
  - (1) Adequate Competition – Competition is adequate when the reasons for a single response were caused by conditions beyond Kendall Area Transit 's control.
  - (2) Inadequate Competition – Competition is inadequate when the reasons for a single response were caused by conditions within Kendall Area Transit 's control.
- (c) Unusual and Compelling Urgency – Kendall Area Transit may limit the number of sources from which it solicits bids or proposals when Kendall Area Transit has such an unusual and urgent need for the products or services that Kendall Area Transit would be seriously injured unless it were permitted to limit the solicitation. Kendall Area Transit may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the products or services.
- (d) Authorized by IDOT – Kendall Area Transit may request permission from IDOT to allow it to use noncompetitive proposals for a particular procurement.
- (e) When Prohibited – Less than full and open competition is not justified based on:



- (1) Failure to Plan – Kendall Area Transit 's lack of advance planning, resulting in limited competition, is not justification for a sole source or single bid award.
  - (2) Limited Availability of Federal Assistance – Concerns about the amount of Federal assistance available to support the procurement;
- (f) Procurement Procedures – The following requirements apply when Kendall Area Transit completes a procurement utilizing less than full and open competition:
- (1) Potential Sources – Kendall Area Transit must solicit offers from as many potential sources as is practicable under the circumstances.
  - (2) Sole Source Justification – Kendall Area Transit must justify all sole source procurements in writing. Sole source procurement justifications must describe the reasons for why a sole source procurement is appropriate, state which of the authorized justifications listed in Section 5.6.1.2 are applicable, include a cost analysis and be signed by the Kendall County . If Kendall Area Transit decides to solicit an offer from only one source, Kendall Area Transit must justify its decision in writing. The written justification must include the same elements as a sole source justification except that it must state which of the authorized justifications listed in Section 5.6.1.2 are applicable to the sole source purchase.
  - (3) Cost Analysis – Kendall Area Transit must prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. A price analysis shall not be adequate to justify a sole source purchase.
- (g) Exception for Procurement Activities Using Non-FTA Funds – When it is determined by the Kendall County to be in the best interest of Kendall Area Transit , noncompetitive procurement procedures may be utilized to acquire professional or other transportation-related services that do not involve the use of FTA financial assistance. Any such determination must be made in writing and signed by the Kendall County .

#### **4.7. Evaluation Requirements**

The following standards shall apply to all evaluations of bids or proposals conducted by Kendall Area Transit .

##### **4.7.1. General**

When evaluating bids or proposals received in response to a solicitation, Kendall Area Transit shall consider all evaluation factors specified in the solicitation documents and shall evaluate the bids or offers proposals only on the evaluation factors included in those solicitation documents. Kendall Area Transit may not modify its evaluation factors after bids or proposals have been received without re-opening the solicitation.

#### **4.7.2. Options**

The following standards shall apply when awarding contracts that include options:

##### **4.7.2.1. Evaluation Required**

In general, Kendall Area Transit must evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.

##### **4.7.2.2. Evaluation Not Required**

Kendall Area Transit need not evaluate bids or offers for any option quantities when Kendall Area Transit does not intend to exercise those options after the contract is awarded or if it determines that evaluation would not otherwise be in its best interests.

##### **4.7.2.3. Evaluators**

In addition to evaluators with experience in technical or public policy matters related to the procurement, other evaluators may also include auditors and financial experts to the extent that the Kendall County determines would be necessary or helpful. If Kendall Area Transit lacks qualified personnel within its organization, it may solicit evaluators from other transit organizations or may contract for evaluation services. If it does so, the procurement procedures in this policy will apply to those contracts and to those contractors selected to perform evaluation functions on behalf of the recipient.

#### **4.8. Contract Award Requirements**

The following standards shall apply to all contract award decisions made by Kendall Area Transit :

##### **4.8.1. Award to Other Than the Lowest Bidder or Offeror**

Kendall Area Transit may award a contract to other than the lowest bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs. Kendall Area Transit may also award a contract to other than the offeror whose price proposal is lowest, when stated in the evaluation factors of the solicitation. In both cases, Kendall Area Transit must include a statement in its solicitation document reserving the right to award the contract to other than the low bidder or offeror.

##### **4.8.1.1. Award Only to a Responsible Bidder or Offeror**

Kendall Area Transit may only award contracts to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract and who demonstrate that its proposed subcontractors also qualify as responsible. Kendall Area Transit must consider such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources when making a determination of contractor responsibility. Kendall Area Transit must also ensure that the contractor is not

listed as a debarred or suspended contractor on the System for Award Management (SAM), which is maintained by the General Services Administration (GSA), at the time of contract award. Entities that are listed as debarred or suspended contractors on SAM may not be determined to be responsible contractors by Kendall Area Transit . For every procurement action above the micro-purchase level, Kendall Area Transit must make a written determination of the responsibility of the contractor and include such determination in the applicable contract file (See Section 3.6).

To designate a prospective contractor “responsible” as required by 49 U.S.C. § 5325, Kendall Area Transit , at a minimum, must determine and ensure that the prospective contractor satisfies the following criteria described herein. In addition to being otherwise qualified and eligible to receive the contract award under applicable laws and regulations, a responsible contractor:

- (a) Integrity and Ethics – Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).
- (b) Debarment and Suspension – Is neither debarred nor suspended from Federal programs under DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4.
- (c) Affirmative Action and DBE – Is in compliance with the Common Grant Rules’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements.
- (d) 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).
- (e) 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).
- (f) Licensing and Taxes – Is in compliance with applicable licensing and tax laws and regulations.
- (g) 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).
- (h) Production Capability – Has, or can obtain, the necessary production, construction, and technical equipment and facilities.
- (i) Timeliness – Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- (j) Performance Record – Is able to provide a:
  - (1) Current Performance – Satisfactory current performance record; and

(2) Past Performance – Satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:

- i. Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,
- ii. Adequate Past Experience. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient’s solicitation, and
- iii. Any Past Deficiencies Not the Fault of the Bidder or Offeror. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be non-responsible, unless the recipient determines that the circumstances were properly beyond the bidder or offeror’s control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. IDOT expects Kendall Area Transit to consider the number of the bidder or offeror’s contracts involved and the extent of deficient performance in each contract when making this determination.

#### **4.8.1.2. Rejection of Bids and Proposals**

Kendall Area Transit may reject all bids or proposals submitted in response to an Invitation for Bids or Request for Proposals. Kendall Area Transit must include a statement in its solicitation document reserving the right to reject all bids or proposals.

- (a) Extent and Limits of Contract Award – The selection of a contractor to participate in one aspect of a project does not, by itself, constitute a sole source selection of the contractor’s wholly owned affiliates to perform other work in connection with the project.

### **4.9. Independent Cost Estimate and Cost and Price Analysis**

#### **4.9.1. Independent Cost Estimate**

For every procurement, Kendall Area Transit shall make a written independent estimate of cost prior to receiving price quotes, bids or proposals.

#### **4.9.2. Cost or Price Analysis**

Kendall Area Transit shall perform a cost or price analysis in connection with every procurement over \$250,000 and for all contract modifications.

#### **4.9.2.1. Price Analysis**

If Kendall Area Transit determines that competition was adequate, a written price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price.

#### **4.9.2.2. Cost Analysis**

Kendall Area Transit must perform or obtain a cost analysis when:

- (a) A price analysis will not provide sufficient information to determine the reasonableness of the contract cost.
- (b) When the offeror submits elements of the estimated cost.
- (c) When only a sole source is available, even if the procurement is a contract modification.
- (d) In the event of a change order.

#### **4.9.3. Approval of Contracts**

All contracts must be signed by the «Contract\_Signer».

## **5. CONTRACT ADMINISTRATION REQUIREMENTS AND CONSIDERATIONS**

### **5.1. Kendall Area Transit Staff Responsibilities**

Prior to execution of third party contracts, Kendall Area Transit shall designate a Project Manager to serve as Kendall Area Transit 's principal contact with the contractor and as the primary administrator of the contract. The designated Project Manager for each contract shall have responsibility for directing and overseeing the work performed by the contractor; reviewing and approving deliverables and invoices from the contractor; determining percentage of contract completion for progress payments (if applicable); making recommendations on the exercise of contract options (if applicable); recommending contract changes; preparing justifications for contract changes; performing independent cost estimates and cost or price analyses for contract changes; making recommendations on approval or rejection of subcontractors; assisting with the resolution of contract disputes; making recommendations on contract termination or other contractor disciplinary actions; maintaining complete contract files; and other contract administration duties that may be necessary.

### **5.2. Administrative Restrictions on the Acquisition of Property and Services**

The following Federal laws and regulations impose administrative requirements, many of which will affect specific third party procurements.

#### **5.2.1. Legal Eligibility**

The property or services acquired must be eligible for support under the restrictions accompanying the Federal statute authorizing the Federal assistance to be used.

#### **5.2.2. Scope of the Project**

The property or services acquired must be eligible for support within the scope of the underlying grant or cooperative agreement from which the Federal assistance to be used is derived.

#### **5.2.3. Period of Performance**

Kendall Area Transit will use sound business judgment and be judicious in establishing and extending a contract's period of performance.

##### **5.2.3.1. General Standards**

The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. Kendall Area Transit will also consider competition, pricing, fairness, and public perception. Kendall Area Transit 's procurement files will document its rationale for determining the performance period designated for each contract.

##### **5.2.3.2. Time Extensions**

Consistent with the general tone of FTA Circular 4220.1F, contract time extensions shall be considered in light of whether they are permissible changes or impermissible cardinal changes. Once Kendall Area Transit awards a third party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.

### **5.2.3.3. Authority to Extend**

The Contract\_Signer has the sole authority to approve and execute contract modifications. The Kendall County for the contract shall recommend all contract time; prior to making a recommendation for a contract time extension. The Kendall County shall prepare a written justification and cost analysis (if applicable) for the contract time extension and shall negotiate the appropriate contract modification with the contractor.

## **5.3. Federal Cost Principles**

Federal rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient.

OMB guidance for grants and agreements, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR § 200, applies to project costs incurred Kendall Area Transit .

## **5.4. Payment Provisions**

Kendall Area Transit will follow the provisions of this section when using FTA funds to support its third party contracts.

### **5.4.1. Financial Support for the Project**

Costs may only be incurred by Kendall Area Transit if IDOT has awarded a financial assistance contract to Kendall Area Transit .

#### **5.4.1.1. Progress Payments**

Progress payments are payments for contract work that has not been completed. Kendall Area Transit may use IDOT assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

#### **5.4.1.2. Adequate Security for Progress Payments**

Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement

scenarios and factual circumstances. Kendall Area Transit should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.

#### **5.4.1.3. Adequate Documentation**

Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.

#### **5.4.1.4. Percentage of Completion Method**

Federal rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. Kendall Area Transit, however, may not make progress payments for other than construction contracts based on this percentage method.

### **5.5. Protections Against Performance Difficulties**

Kendall Area Transit shall include provisions in its third party contracts that will reduce potential problems that might occur during contract performance, as follows:

#### **5.5.1. Changes**

Kendall Area Transit shall include provisions that address changes and changed conditions in all third party contracts except for routine supply contracts.

#### **5.5.2. Remedies**

Kendall Area Transit shall include provisions that address remedies in its third party contracts. Provisions related to remedies may include provisions for:

##### **5.5.2.1. Liquidated Damages**

Kendall Area Transit may use liquidated damages if Kendall Area Transit reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. Rate and measurement standards must be calculated to reasonably reflect Kendall Area Transit's costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages may be established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The contract file must include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account.



#### **5.5.2.2. Violation or Breach**

Third party contracts exceeding \$250,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor.

#### **5.5.2.3. Suspension of Work**

Kendall Area Transit may include provisions pertaining to suspension of work in its third party contracts.

#### **5.5.2.4. Termination**

Termination for cause and termination for convenience provisions must be included in third party contracts exceeding \$10,000.

### **5.6. Contents of Complete Contract Files**

The following documents shall comprise the contents of a complete contract file for procurements above the micro-purchase level:

#### **5.6.1. Written Record of Procurement History**

Kendall Area Transit shall maintain written records detailing the history of the procurement, including records relating to:

##### **5.6.1.1. Procurement Method**

Kendall Area Transit must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive.

##### **5.6.1.2. Contract Type**

Kendall Area Transit must state the reasons for selecting the contract type it used.

##### **5.6.1.3. Contractor Selection**

Kendall Area Transit must state its reasons for contractor selection or rejection, including written justification and evaluation documents.

##### **5.6.1.4. Contractor Responsibility**

Kendall Area Transit must provide a written determination of responsibility for the successful contractor.

#### **5.6.1.5. Cost or Price**

Kendall Area Transit must evaluate and state its justification for the contract cost or price, including the independent cost estimate and cost or price analysis.

#### **5.6.1.6. Reasonable Documentation**

Kendall Area Transit must retain documentation commensurate with the size and complexity of the procurement, including documents related to solicitation, receipt and evaluation of offers, and contract award, negotiation and execution.

### **5.7. Access to Records**

Federal rules (49 U.S.C. § 5325(g)) provide FTA and IDOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

### **5.8. Contract Administration and Close-Out Documents**

Kendall Area Transit shall maintain written records detailing the performance and close-out of the contract, including records relating to:

#### **5.8.1. Contractor Performance**

Kendall Area Transit must maintain documents related to contractor adherence to budget and schedule, compliance with contract terms and conditions, DBE participation, progress reports, disputes and disciplinary actions.

#### **5.8.2. Contract Deliverables**

Kendall Area Transit must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables.

#### **5.8.3. Contract Changes**

Kendall Area Transit must maintain copies of all contract modifications, including documentation related to the determination of need, written justification and rationale, cost analysis, negotiation and execution.

#### **5.8.4. Contract Payments**

Kendall Area Transit must retain documentation of invoices, approval of payments, requests for modifications to invoices, determination of percentage of contract completion for partial payments (if applicable), and ownership of title to partial work products.

#### **5.8.5. Contract Close-Out**

Kendall Area Transit must retain documentation related to contractor performance and evaluation, approval of final deliverables and payments, transfer of title to complete work products to Kendall Area Transit, and contract audit and final reconciliation.

### **5.9. Protest Procedures**

#### **5.9.1. Statement of Policy**

Kendall Area Transit is responsible for resolving all contractual and administrative issues, including protests of evaluations and contract awards, arising out of its third party procurements using good administrative practices and sound business judgment.

In general, IDOT will not substitute its judgment for that of Kendall Area Transit unless the matter is primarily a Federal concern. Nevertheless, IDOT and FTA can become involved in Kendall Area Transit's administrative decisions when a Kendall Area Transit protest decision is appealed to IDOT.

Kendall Area Transit shall give timely notification to IDOT when it receives a third party procurement protest and will keep FTA informed about the status of any such protest. Kendall Area Transit shall disclose all information about any third party procurement protest to IDOT upon request.

Kendall Area Transit's procedure for addressing third party procurement protests is described in Paragraph 6.9.2 below. Kendall Area Transit shall insert its protest procedure in all solicitation documents for products and services having an estimated value of \$100,000 or greater.

#### **5.9.2. Kendall Area Transit Staff Responsibilities**

The following staff responsibilities shall be assigned in all protests:

- Kendall County – Responsibilities include: ensuring that the Kendall Area Transit Protest Procedure is included in all solicitation documents; and providing information to and assisting the Signer and Legal Counsel with the resolution of protests.
- Legal Counsel – Responsibilities include: reviewing all procurement protests; and advising and assisting the Kendall Area Transit as needed with the resolution of all procurement protests.

#### **5.9.3. Solicitation Provision**

Kendall Area Transit shall insert the following provision in all solicitation documents:

### **5.9.3.1. Pre-Proposal Protests**

All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Kendall County as specified below not later than ten (10) business days prior to the deadline for submission of bids/proposals.

The Kendall County may, within his or her discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If the deadline for submission of bids/proposals is postponed by the Kendall County as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the Kendall County shall be the final agency decision on the matter but shall be subject to judicial review as set forth by FTA below.

### **5.9.3.2. Pre-Award Protests**

With respect to protests made after the deadline for submission of bids/proposals but before contract award by Kendall Area Transit , protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, Kendall Area Transit 's failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Kendall County as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by Kendall Area Transit .

The Kendall County may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that Kendall Area Transit shall announce the contract award.

The decision by the Kendall County shall be the final agency decision on the matter but shall be subject to judicial review as set forth or review by IDOT as specified below.

### **5.9.4. Requirements for Protests**

All protests must be submitted to Kendall Area Transit in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor, and be signed by the Protestor. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by Kendall Area Transit .

All protests must be directed in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Kendall County at the address shown in the solicitation documents.

#### **5.9.5. Protest Response**

The Kendall County shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, Kendall Area Transit will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official Kendall Area Transit response to the protest and Kendall Area Transit will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

#### **5.9.6. Review of Protests by IDOT**

All protests involving contracts financed with Federal assistance shall be disclosed to IDOT. Protesters shall exhaust all administrative remedies with Kendall Area Transit prior to pursuing protests with IDOT. IDOT limits its reviews of protests to: a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation. Appeals to IDOT must be received within five (5) working days of the date the Protester has received actual or constructive notice of Kendall Area Transit final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to IDOT.