



September 23, 2011

Marisol Simon, Regional Administrator
Federal Transit Administration, Region V
200 West Adams St., Suite 2410
Chicago, IL 60606

Re: FTA Application(s)
City of Kalamazoo (dba Kalamazoo
Metro Transit)
Purchase (1) Replacement <30-FT Bus
And Communications Equipment
MI-03-0240 (originally submitted as
MI-04-0070)¹

Dear Ms. Simon:

This is in reply to the request from your office that we review the above-captioned application for a grant under 49 U.S.C. 5333(b).

Pursuant to the requirements of Federal transit law and the Department of Labor's (Department) Guidelines (29 C.F.R. Part 215), the City of Kalamazoo and the Amalgamated Transit Union (ATU), Local 1093 were directed on September 6, 2011, to engage in good faith negotiations/discussions to develop a mutually acceptable accommodation in light of the enactment P.A. 54 of 2011, M.C.L. 423.325(b) (P.A. 54).

The parties informed the Department on September 22, 2011 that they had failed to reach an agreement to develop protections the Department concluded were necessary under 49 U.S.C. 5333(b) and, based on the time constraints, waived the opportunity to submit briefs to Department on the remaining issues in dispute. The Department has fully considered the final positions and last proposals from the parties exchanged via email, and this certification reflects the Department's determination of the issues in dispute and sets forth the protective terms and conditions for certification.

¹ FTA informed the Department of Labor that project number MI-04-0070 was being changed to MI-03-0240 because of accounting code issues. The application was not altered in any other way.

The Department concluded in its letter of September 6, 2011, that the enactment of P.A. 54 restricts the parties' obligations under Federal transit law to preserve and continue collective bargaining as incorporated in the parties' agreement of July 18, 1975. The Department has determined that the attached "Supplemental Employee Protections" satisfies the requirement of 49. U.S.C 5333(b) by providing for the perseveration and continuation of collective bargaining and the maintenance of the status quo until a good faith impasse or a successor agreement is reached. The parties' final offers included an agreement to initiate collective bargaining to reach a successor agreement eight months in advance of the expiration of an existing collective bargaining agreement, so that provision has been incorporated into the "Supplemental Employee Protections." In addition, the Department's has also determined that the "Supplemental Employee Protections" will also supplement the Unified Protective Arrangement applied to the City of Kalamazoo and employees represented by the American Federation of State, County and Municipal Employees (AFSCME) and Kalamazoo Municipal Employee Association (KMEA). The following shall serve as the basis of this certification.

In connection with a previous grant application, the City of Kalamazoo and the Amalgamated Transit Union, Local 1093, (ATU) agreed that the terms and conditions of their agreement dated July 18, 1975, shall be made applicable to the instant grant. The terms and conditions of the July 18, 1975 agreement and the attached "Supplemental Employee Protections" provide protections to employees represented by the union which satisfy the requirements of 49 U.S.C. 5333(b) for operating assistance grants.

In addition, the January 3, 2011, Unified Protective Arrangement (UPA) provides to transportation related employees in the service area of the project protections satisfying the requirements of 49 U.S.C. 5333(b). The employees in the service area of the project, represented by the American Federation of State, County and Municipal Employees (AFSCME) and Kalamazoo Municipal Employee Association (KMEA), shall be considered third party beneficiaries in accordance with condition (3) below. The City/Kalamazoo Metro Transit, by executing the contract of assistance accepts the terms and conditions of the UPA. The UPA shall be supplemented by the attached "Supplemental Employee Protections".

Furthermore, by letter dated August 23, 2011, the City of Kalamazoo assured the Department that nothing about its present financial condition would trigger any mechanisms under the Local Government and School District Fiscal Accountability Act ("Accountability Act"), M.C.L. 141.1501, *et seq.*, leading to the impairment of the rights protected under the arrangements noted above, and the City does not anticipate the advent of conditions leading to such circumstances

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the above employee protective arrangements, as supplemented, shall be made applicable to the instant project and made part of the contract of assistance, by reference;
2. The term "project" as used in the above arrangements shall be deemed to cover and refer to the instant project;
3. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements referenced in the grant contract between the U.S. Department of Transportation and City of Kalamazoo, and the parties to the contract so signify by executing that contract. Such transit employees are also third-party beneficiaries to the protective arrangements incorporated in any subsequent contract(s) of assistance between the Grantee and any Recipient(s). Employees not represented by a labor organization, or if so represented, through their representative on their behalf, may assert claims with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government;
4. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes; and
5. Employees of mass transportation providers in the service area of the project who are not represented by a union designated above shall be afforded substantially the same levels of protections as are afforded to the employees represented by the union(s) under the above referenced protective arrangements, as supplemented, and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangements and absent mutual agreement to utilize any other final and binding resolution procedure, any party to the dispute may submit the controversy to final and binding arbitration. With respect to a dispute involving a union not designated above, if a component of its parent union is already subject to a protective arrangement, the arbitration procedures of that arrangement will be applicable. If no component of its parent union is subject to the arrangements, the Recipient or the union may request the American Arbitration Association to furnish an arbitrator and administer a final and binding resolution of the dispute under its Labor Arbitration Rules. If the employees are not represented by a union for purposes of collective bargaining, the Recipient or employee(s) may request the Secretary of Labor to designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination of the dispute.

Sincerely,



Ann Comer, Chief
Division of Statutory Programs

Attachment

cc: Kerry Miller/FTA
Carmine Lewis/City of Kalamazoo (dba Kalamazoo Metro Transit)
Jessica M. Chu/ATU
Gerald McEntee/AFSCME
Lee Larson/KMEA