

**State of Maine Fixed Route Operators**

**Request for Proposals**

**Transit Consultant**

**Project # P16-007**

**Table of Contents**

**Legal Notice**

**Part I.** Instructions and General Information

**Part II.** Supplemental Terms and Conditions

**Part III.** Technical Specifications

**Part IV.** Price Proposal

**Part V.** Federally Required and Model clauses

**State of Maine Fixed Route Operators**  
**Request for Proposals**  
**Transit Consultant**

Proposals will be received by the Maine Fixed Route Operators (hereinafter called the FRO) for the professional and technical services of a Transit Consultant to assist the FRO with the process locating used buses and verifying progress of work done by the Contractor. They will also monitor work to be sure all FTA, State and local rules and regulations are followed.

The Request for Proposals and technical specifications are available at no cost via email at [bids@bangormaine.gov](mailto:bids@bangormaine.gov) and on the City of Bangor's website at [www.bangormaine.gov/proposals](http://www.bangormaine.gov/proposals). Please include complete contact information with the request.

Proposals must be received by 2:00 P.M., Wednesday, September 2, 2015.

This project is being funded in part with funds from the U.S. DOT, Federal Transit Administration and is subject to the terms and conditions of the grant agreement and the availability of funds from a State bond from the State of Maine Department of Transportation. Disadvantaged Business Enterprises are encouraged to respond.

Deborah Cyr, Finance Director  
City of Bangor, ME  
August 17, 2015

**REQUEST FOR PROPOSALS  
Maine Fixed Route Operators (FRO)  
Transit Consultant**

**PART I**

**1. Instructions and General Conditions**

Proposals will be received by the Maine Fixed Route Operators (hereinafter called the FRO) for the professional and technical services of a Transit Consultant to assist the FRO with the process locating used buses and verifying progress of work done by the Contractor. They will also monitor work to be sure all FTA, State and local rules and regulations are followed.

The Maine FRO is seeking bids to engage the professional consulting services of a qualified individual or company to assist the Maine Fixed Route Operators in the process listed in the scope of work of the RFP.

**2. Definitions**

A. Maine Fixed Route Operator (FRO) are comprised of:

City of Bangor / Community Connector  
481 Maine Ave.  
Bangor, ME 04401

ShuttleBus / Zoom  
13 Pomerleau St.  
Biddeford, ME 04005

Lewiston-Auburn Transit Committee  
125 Manley Road  
Auburn, ME 04210

South Portland Bus Service  
46 O'Neil St.  
South Portland, ME 04106

Greater Portland Transit District (METRO)  
114 Valley St.  
Portland, ME 04102

- B. All references to municipal corporation or municipality or recipient or procuring agency in this Request for Purchase/Bid (RFP/B) will mean *Maine Fixed Route Operators (FRO)*.
- C. All references to bidder or offeror in this RFP/B will mean the Individual, Individuals, Company, Firm or Governmental Entity submitting a bid proposal.
- D. All references to successful bidder in this RFP/B will mean the Best Value Bidder, as determined by the municipal corporation and approved by the *Maine FRO*.
- E. All references to consultant in this RFP/B will mean the successful bidder with whom the contract for purchase of the bid items is being executed or with whom a contract has been executed.

### 3. Submission

Please return the Bid Form in an envelope clearly marked **“Maine Fixed Route Operators Consultant Proposal”** by **2:00 P.M., Wednesday, September 2, 2015** to the Purchasing Department, City Hall, 73 Harlow Street, Bangor, Maine 04401.

The Bid Forms may also be submitted via email by sending to: [bids@bangormaine.gov](mailto:bids@bangormaine.gov). If emailing bid, please reference **“Maine Fixed Route Operators Consultant Proposal”** in the subject line. Bids will be publicly opened at the time stated above.

A tabulation of the bids received will be available after 3:00 PM on the date of opening. Bid results may be viewed by visiting the City’s website at [www.bangormaine.gov/proposals](http://www.bangormaine.gov/proposals).

### 4. Questions

All questions, requests for clarifications or requests for approved equals must be submitted in writing to [bids@bangormaine.gov](mailto:bids@bangormaine.gov) by **4:30 pm, Monday, August 24, 2015**.

Response to submissions will be in the form of an addendum which will be available on the City’s website no later than **4:30 pm, Wednesday, August 26, 2015**.

## 5. Proposal Content

All proposals must include the following:

- A cover letter signed by an officer who is authorized to commit the proposer to the contents of the proposal that identifies the Proposer including name, address, phone and fax number, contact person, email address. If the proposer is a joint venture or partnership, all joint ventures or partners must be identified.
- A description of the qualifications and experience of the Consultant
- Detailed description of the proposing firms plan for completing the scope of work, technical work plan and proposed project schedule and project milestones.
- A list of similar transit rebuild contracts that the proposer has undertaken in the last three (3) years. The list must include the name, address, and phone number for a contact person at each property.
- The Price proposal form and certifications
- Proposed estimate of work schedule and finish date.
- Certificate of General Commercial Liability with \$ 1 million coverage

## 6. Information for Bidders

- A. *The Maine FRO* reserves the right to accept or reject any or all bids received and to make the award based on the best interests of the *Maine FRO*. The vendor agrees to hold all prices resulting from the award of this bid for a period of 12 months from date of award.
- B. All appropriate certifications/statements must be signed and accompany each bid.
- C. Maine Fixed Route Operator's Group consists of:
  - City of Bangor/Community Connector
  - Shuttle Bus Zoom
  - Androscoggin Valley Council of Governments
  - South Portland Bus Service
  - Metro Bus Service
- D. This contract will be for minimum of six (6) buses, and a maximum of 10. The pricing of these buses shall be a fair value price where all buses will be of equal price with the exception of any additional work agreed upon between each entity of the FRO and the Contractor.

E. Quoted Price Requirements

The price quoted in any proposal shall include the hourly charge and mileage costs equipment, and other costs necessary to fully complete the work specified in this RFP/B.

**5. Basis for Award**

- A. The specifications and addenda thereto set forth the minimum requirements of the hourly charge and mileage costs that the Maine Fixed Route Operator requires through this procurement.
- B. The award of this contract shall be made to the firm whose proposal, is most advantageous to *the Maine FRO* related to Best Value, Completion Date, Price and other factors considered.
- C. Evaluation Criteria: The Evaluation Team shall consider the following factors in the review of each proposal in accordance with the following:
  - 1. Proposer's qualifications and experience, including key personnel, with similar projects
  - 2. Overall price to complete project
  - 3. Projected work plan and project procedures
  - 4. References

Scoring:

|           |                    |
|-----------|--------------------|
| Section 1 | maximum 40 points  |
| Section 2 | maximum 40 points  |
| Section 3 | maximum 10 points  |
| Section 4 | maximum 10 points  |
| Total     | maximum 100 points |

- D. The municipal corporation reserves the right to waive any minor bid informalities or irregularities received which do not go to the heart of the bid or prejudice other bidders or to reject, for good and compelling reasons, any and all bids submitted. Conditional proposals/bids, or those which take exception to the specifications, will be considered non-responsive and will be rejected.

- E. If two or more responsive, responsible bidders submit identical bids as to price, the decision of the Maine FRO governing body to award the contract to one of such identical bidders shall be final.
- F. In the event a single proposal/bid is received, the FRO will compare the bid to an independent cost analysis prior to the award of the contract.
- G. Bids must be submitted on the forms provided. Bids submitted in any other form will be considered non-responsive and will be rejected. Bidder must fill in all applicable spaces on bid form. All lines must have an indication of bidder's response whether it be "0", "N/A" "—", or a dollar figure. All lines must be filled in to indicate bidder's acknowledgment of the request.
- H. The Consultant agrees to hold all prices resulting from the award of this bid for a period of twelve (12) months from date of award. The Maine FRO reserves the right to reuse this contract by resolution, up to sixty (60) months after date of the original award if mutually agreeable. The Consultant may request a price adjustment upon renewal of the contract.

## **PART II**

### **Maine Fixed Route Operator's (FRO)**

#### **Scope of Work for the Third Party**

**INTENT:** This Scope of Work (SOW) is intended to assist the Maine Fixed Route Operators (FRO) with Third Party Oversight associated with its efforts to locate a specific number of pre-owned Heavy Duty 12 year buses. Perform visual inspections, review maintenance history, and accept for use into the FRO rebuild program. This process will require research with Transit Agencies and Vendors throughout the United States. The Consultant will determine the validity of accepting the buses into the program. Travel will be necessary in order to perform acceptance of the buses. It may be necessary for the Consultant to sub-contract with out of state vendors for inspections in order to reduce the cost of travel.

The Consultant will make every effort to obtain original specifications, FTA required documentation, and Mfg. performed and pending recalls and service bulletins, maintenance records and any other information related to the vehicles.

**The duties that are expected to be performed by the Consultant are listed below, but may encompass minor changes:**

- a. Locating eligible buses, research history and records, analyze and inspect these buses.
- b. Assist the Contractor with inspection of such buses and accept these buses into the FRO rebuild program.
- c. Periodic inspections at the repair facility at initial, 30%,60% and 80% completion points as well as the final test drive for completion to establish proper work and scope has been completed properly.
- d. Necessary meetings with the Contractor and FRO members.
- e. Final documentation to include all necessary FTA documentation required by all parties.
- f. Provide a Coach History book specific to the vehicle receiving the refurbishment overhaul by the Contractor. This will provide a documented history of each bus beginning at the initial inspection through delivery to each entity. Every aspect of the process will be documented.

#### **TASK 1 – COORDINATION OF DUTIES WITH the Contractor and FROs**

The Consultant will provide the following.

- The Consultant will locate, determine the validity, inspection and acceptance of pre-owned transit buses into the Contractor's Bus Rebuild Program. The buses will be earmarked for use by Maine FROs.
- A schedule and all necessary documentation associated assisting the Contractor with Pre-owned Bus Pre-delivery Inspections.
- Third Party Bus Rebuild Inspections.
- All necessary Federal Transit Administration (FTA) documentation required and outlined in FTA Grant Management Guidelines related to funding requirements.
- Meetings as necessary with the Contractor and FROs to provide updated information related to the rebuild process and current timeline.
- Provide a comprehensive Coach History Book on each transit vehicle receiving full or partial rebuilds funded by the FTA and State of Maine. The Coach History Book will fully describe and document the complete

Contractor process from Pre-purchase Inspection to delivery of finished product.

## **TASK 2 – INSPECTION and FOLLOW-UP INSPECTIONS**

After the Contractor accepts the vehicles and commences the repairs, all Third Party Inspections will be performed by the Consultant in a timely manner upon periodic notification from the Contractor such required repairs and updates as outlined in the Contractor's Scope of Work (SOW) have been performed.

Follow-up Inspections will consist of the Consultant re-visiting the Contractor's facility on behalf of any FRO transit agencies and reviewing procedures compliance with all FTA, State of Maine, FRO and FMCSR Inspection, Repair, and Record Retention Standards, FTA Grant Management Guidelines. The Consultant will also advise the Contractor and transit agencies on any updated FTA Standards that provide compliance with State and Federal Rules and Regulations.

One determination of compliance is based on whether the required work performed by the Contractor and the necessary inspections are performed on time by the Consultant.

## **TASK 3 - WARRANTY ADMINISTRATION**

The FTA requires vehicles rebuilt with Federal funds take full advantage of all manufacturer warranties. The Consultant will assure the Contractor providing vehicles utilizing FTA, State of Maine and Local funds to FROs complete all required warranties documentation associated with warranties on any vehicles. The Consultant will also be responsible for working with the Contractor and FROs in order to resolve any warranty issues. The Contractor and FRO written policy on the process & coordination of warranty work should be completed by the delivery date. This policy will direct the FRO to coordinate their own warranty work for the vehicles that are titled to them. Limited involvement in this process may be required by the Consultant.

## **TASK 4 - ADMINISTRATIVE MEETINGS WITH the Consultant, the Contractor and FROs**

The consultant will meet with the Contractor, and FROs periodically to discuss vehicle purchases, deliveries, warranties, inspections and final delivery of vehicles.

## **TASK 5- REVIEW OF STATE AND FEDERAL REGULATIONS**

The consultant is required to stay current on all Federal and State Regulations in numerous areas including, but not limited to, Federal Transit Administration, State of Maine Commercial Motor Vehicle Inspection Laws, Maine Title 29-A, FMVSS, FMCSR, FMCSA and ADA requirements.

## **TASK 6 – OVERHAULS AND REBUILDS**

The Consultant will work with the Contractor, FTA, FROs, Manufacturers and other authorized company, government and state agency both in and out of state to determine advisability and implementation of necessary Scope of Works, Policies, and Procedures. Arrange and attend necessary meetings, arrange schedules, perform required oversight related to Public Transportation vehicle purchases, disposals, refurbishment/rebuilds of FTA and State of Maine funded vehicles. This task will include extensive travel to the respective Agencies, the Contractor's facility, inspection assessments related to public transportation vehicle technical specifications, build processes and monthly project updates.

## **TASK 7 – COACH HISTORY BOOK**

The Consultant will provide a Coach History Book specific to each transit vehicle receiving a full or partial rebuild by the Contractor. This documentation will provide a documented history beginning with the pre-inspection process through delivery of the vehicle to the respective Agency. Every aspect of the processes will be documented. The Coach History Books will be provided at time of delivery of each completed vehicle.

## **IN SUMMARY**

The above Consultants Task schedules are subject to change due to the Contractor's and FROs requests. Additional time may be necessary on part of the Consultant to complete some Tasks. Unforeseen emergencies, contract dates, delivery dates, vehicle rebuild process, required follow-up inspection reviews and vehicle warranty issues with delivered vehicles may also impact the schedules.

The Consultant is required to notify the Contractor and FROs administrative staff immediately of any FTA, FMCSA or State non-compliant issues related to the Tasks listed above.

Extensive travel in-state and out-of-state is necessary to complete the Tasks in this Assignment Letter.

**PART III**

**Bid Form for Professional Services**

Cost per bus for services required to perform scope:

**Hourly Amount**      \$ \_\_\_\_\_ per hour

**Anticipated needed hours** \_\_\_\_\_

Hourly amount breakdown (following Federal 1/3% breakdown formula.)

Salary: \$\_\_\_\_\_ per hour (to perform all duties outlined in scope of work)

Expenses \$\_\_\_\_\_ per hour (Office and required equipment, supplies, phone, vehicle costs and expenses, meals travel expenses in and out of state, meeting expenses.

Admin: \$\_\_\_\_\_ per hour (Federal and State fees, attorney fees, liability insurance, auto insurance, Federal and State taxes, accounting fees and professional dues, etc.)

**Mileage reimbursement** \$\_\_\_\_\_ per mile

Expected **mileage** \_\_\_\_\_ miles

Amount of General Commercial Liability Insurance (min. 1 million) \$ \_\_\_\_\_

**Please furnish copy of Certificate of all required insurances and Worker's Compensation, if applicable.**

**Please furnish a list of qualifying projects the firm has worked on and accomplished in the last three (3) years.**

**Name of Firm:** \_\_\_\_\_

**Submitting Signature:** \_\_\_\_\_

**Title & Date:** \_\_\_\_\_

**BEST PRACTICES PROCUREMENT MANUAL**  
**TABLE OF CONTENTS (Appendix A - Governing Documents)**

**FEDERAL TRANSIT ADMINISTRATION**

**A.1 - Federally Required and Other Model Contract Clauses**

1. Energy Conservation Requirements
2. Bus Testing
3. Pre-Award and Post Delivery Audit Requirements
4. Access to Records and Reports
5. Federal Changes
6. [Reserved]
7. No Government Obligation to Third Parties
8. Program Fraud and False or Fraudulent Statements and Related Acts
9. Termination
10. Government-wide Debarment and Suspension (Nonprocurement)
11. Privacy Act
12. Civil Rights Requirements
13. Breaches and Dispute Resolution
14. Patent and Rights in Data
15. Transit Employee Protective Agreements
16. Disadvantaged Business Enterprises (DBE)
17. [Reserved]
18. Incorporation of Federal Transit Administration (FTA) Terms

**1. ENERGY CONSERVATION REQUIREMENTS**  
**42 U.S.C. 6321 et seq.**  
**49 CFR Part 18**

**Applicability to Contracts**

The Energy Conservation requirements are applicable to all contracts.

**Flow Down**

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

**Model Clause/Language**

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

**Energy Conservation** - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

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**2. BUS TESTING**  
**49 U.S.C. 5323(c)**  
**49 CFR Part 665**

**Applicability to Contracts**

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

**Flow Down**

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

## **Model Clause/Language**

Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to sub recipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

**Bus Testing** - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

### **CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS**

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

### **3. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS**

**49 U.S.C. 5323**  
**49 CFR Part 663**

#### **Applicability to Contracts**

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

#### **Flow Down**

These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

#### **Model Clause/Language**

Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to sub recipients and third party contractors.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

**Pre-Award and Post-Delivery Audit Requirements** - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

*(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)*

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j) (2) (C), Section 165(b) (3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

## **4. ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325**  
**18 CFR 18.36 (i)**  
**49 CFR 633.17**

### **Applicability to Contracts**

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

### **Flow down**

FTA does not require the inclusion of these requirements in subcontracts.

### **Model Clause/Language**

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

**Access to Records** - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project

excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

7. FTA does not require the inclusion of these requirements in subcontracts.

## Requirements for Access to Records and Reports by Types of Contract

| Contract Characteristics  | Operational Service Contract                               | Turnkey   | Construction  | Architectural Engineering                     | Acquisition of Rolling Stock                  | Professional Services                         |
|---|--|---|---|---|---|---|
| <u>I State Grantees</u><br><br>a. Contracts below SAT (\$100,000)<br><br>b. Contracts above \$100,000/Capital Projects      | None<br><br>None unless <sup>1</sup> non-competitive award | Those imposed on state pass thru to Contract or             | None<br><br>Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311 | None<br><br>None unless non-competitive award | None<br><br>None unless non-competitive award | None<br><br>None unless non-competitive award |
| <u>II Non State Grantees</u><br><br>a. Contracts below SAT (\$100,000)<br><br>b. Contracts above \$100,000/Capital Projects | Yes <sup>3</sup><br><br>Yes <sup>3</sup>                   | Those imposed on non-state Grantee pass thru to Contract or | Yes<br><br>Yes  | Yes<br><br>Yes                                | Yes<br><br>Yes                                | Yes<br><br>Yes                                |

Sources of Authority:

<sup>1</sup>49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup>18 CFR 18.36 (i)

## 5. **FEDERAL CHANGES**

### **49 CFR Part 18**

#### **Applicability to Contracts**

The Federal Changes requirement applies to all contracts.

#### **Flow Down**

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

#### **Model Clause/Language**

No specific language is mandated. The following language has been developed by FTA.

**Federal Changes** - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

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## 6. **[RESERVED]**

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## **7. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

### **Applicability to Contracts**

Applicable to all contracts.

### **Flow Down**

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

### **Model Clause/Language**

While no specific language is required, FTA has developed the following language.

#### **No Obligation by the Federal Government.**

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**8. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS  
AND RELATED ACTS**

**31 U.S.C. 3801 et seq.  
49 CFR Part 31 18 U.S.C. 1001  
49 U.S.C. 5307**

**Applicability to Contracts**

These requirements are applicable to all contracts.

**Flow Down**

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

**Model Clause/Language**

These requirements have no specified language, so FTA proffers the following language.

**Program Fraud and False or Fraudulent Statements or Related Acts.**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001

and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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## **9. TERMINATION**

### **49 U.S.C. Part 18 FTA Circular 4220.1E**

#### **Applicability to Contracts**

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

#### **Flow Down**

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

#### **Model Clause/Language**

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

##### **a. Termination for Convenience (General Provision)**

The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall

promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

**b. Termination for Default [Breach or Cause] (General Provision)**

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)**

The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

#### **d. Waiver of Remedies for any Breach**

In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

#### **e. Termination for Convenience (Professional or Transit Service Contracts)**

The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

#### **f. Termination for Default (Supplies and Service)**

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

#### **g. Termination for Default (Transportation Services)**

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

#### **h. Termination for Default (Construction)**

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

**i. Termination for Convenience or Default (Architect and Engineering)**

The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

**j. Termination for Convenience or Default (Cost-Type Contracts)**

The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the

termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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## **10. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

### **Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has

been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

### **Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **{Maine FRO}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{Maine FRO}**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid

and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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## **11. PRIVACY ACT**

### **5 U.S.C. 552**

#### **Applicability to Contracts**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

#### **Flow Down**

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

#### **Model Clause/Language**

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

**Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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## **12. CIVIL RIGHTS REQUIREMENTS**

**29 U.S.C. § 623, 42 U.S.C. § 2000  
42 U.S.C. § 6102, 42 U.S.C. § 12112  
42 U.S.C. § 12132, 49 U.S.C. § 5332  
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

### **Applicability to Contracts**

The Civil Rights Requirements apply to all contracts.

### **Flow Down**

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

### **Model Clause/Language**

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

**Civil Rights** - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

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## **13. BREACHES AND DISPUTE RESOLUTION**

### **49 CFR Part 18 FTA Circular 4220.1E**

#### **Applicability to Contracts**

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

#### **Flow Down**

The Breaches and Dispute Resolutions requirements flow down to all tiers.

#### **Model Clauses/Language**

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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## **14. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**

**49 U.S.C. § 5310, § 5311, and § 5333  
29 CFR Part 215**

### **Applicability to Contracts**

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

## **Flow Down**

These provisions are applicable to all contracts and subcontracts at every tier.

## **Model Clause/Language**

Since no mandatory language is specified, FTA had developed the following language:

### **Transit Employee Protective Provisions.**

(1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms

and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

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## **15. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### **49 CFR Part 26**

#### **Background and Applicability**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

### **Disadvantaged Business Enterprises**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *and Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is **.4 %**. A separate contract goal **[of .4 % DBE participation has]** been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{Maine FRO}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;

4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
  5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
  6. If the contract goal is not met, evidence of good faith efforts to do so.
- c. **[Bidders][Offerors]** must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).
- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **Maine FRO**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**
- e. The contractor must promptly notify **Maine FRO**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **Maine FRO**.

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**16. [RESERVED]**

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## **17. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

### **FTA Circular 4220.1E**

#### **Applicability to Contracts**

The incorporation of FTA terms applies to all contracts.

#### **Flow Down**

The incorporation of FTA terms has unlimited flow down.

#### **Model Clause/Language**

FTA has developed the following incorporation of terms language:

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

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