

**State of Maine Fixed Route Operators
Request for Proposals
Rebuilt Bus Procurement**

Project # P16-008

Table of Contents

Legal Notice

- Part I.** Instructions and General Information
- Part II.** Supplemental Terms and Conditions
- Part III.** Bid appeals and Conditions
- Part IV.** Insurance Requirements
- Part V.** Technical Specifications
- Part VI.** Price Proposal and Various Forms
- Part VII.** Federally Required and Model Clauses

**State of Maine Fixed Route Operators
Request for Proposals
Rebuilt Bus Procurement**

Proposals will be received by the Maine Fixed Route Operators (hereinafter called the FRO) for the purchase of six rebuilt Heavy duty 12 year Transit buses.

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

Proposals must be received by 2:00 PM on Wednesday, September 16, 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)
Rebuilt Bus Procurement**

PART I

1. INSTRUCTIONS AND GENERAL CONDITIONS

The Maine Fixed Route Operators (FRO) is seeking bids to purchase rebuilt heavy duty, 30-35 foot, 12 year buses. The final product shall:

- A. Extend the service life of each bus for 5 years in order to provide a safe, reliable general public transit bus that meets the requirements of all Federal Transit Administration (FTA) guidelines.
- B. Have no remaining Federal interest.
- C. Be delivered to the appropriate FRO purchasing the bus.
- D. Carry a one (1) year warranty covering 100% parts and labor beginning with the delivery and acceptance of each bus.

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 contractor 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.
- F. All references to manufacturer in this RFP/B will mean the company actually constructing or manufacturing items for which these bids are solicited, which may or may not be the bidder, successful bidder and/or the contractor.
- G. The term "Consultant," shall describe the individual or company hired by the FRO to work for them and assist with professional and technical services. His/her services shall help to create a rebuilt Bus with an additional useful life. The intent of this rebuild is to extend the useful life by five years.

The FRO will hire its own independent consultant in order to provide critical, technical expertise during the length of this contract.

3. Submission

Please return the Bid Form in an envelope clearly marked "**Maine Fixed Route Operators Bus Proposal/Bid**" by **2:00 P.M., Friday, September 16, 2015** to the Purchasing Department, City Hall, 73 Harlow Street, Bangor, Maine 04401.

The bid/proposal may also be submitted via email by sending to: bids@bangormaine.gov. If emailing bid, please reference "**Maine Fixed Route Operators Bus Proposal/Bid**" 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.

4. Questions

All questions, requests for information or requests for approved equals must be submitted to bids@bangormaine.gov by **4:30 P.M., Monday, August 31, 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 P.M., Thursday, September 3, 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 project manager, other key supervisors and technicians to be assigned in this project
- A description of the proposer's capabilities, experience and facility where the work of this RFP/B will be conducted.
- Detailed description of the proposing firms plan for completing the scope of work, technical work plan and proposed project schedule and project milestones.
- Identify any sub-contractors and their qualifications.
- Description of the proposer's quality assurance program, testing and certification of completed bus restoration.
- 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.
- Identify and describe the circumstances of any overhaul contract that have been terminated by a customer for cause within the last three years.
- Identify and exceptions or deviations from the project schedule or specifications.
- The Price proposal form and certifications
- Proposed estimate of work schedule and finish date.

**PART II
SUPPLEMENTAL TERMS AND CONDITIONS**

6. Information for Bidders

- A. *The Maine FRO* reserves the right to accept or reject any or all proposals 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 proposal/bid for a period of 12 months from date of award.
- B. All appropriate certifications/statements must be signed and accompany each proposal/bid.
- C. This contract will be for minimum of six (6) buses, and a maximum of ten (10). The price 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.

This first year contract will consist of purchases for:

- City of Bangor / Community Connector three (3) buses
- Project #'s 16-008 (a), (b), (c)
- ShuttleBus / Zoom two (2) buses
- Project #'s 16-008 (d), (e)
- Lewiston Auburn Transit Committee one (1) bus
- Project # 16-008 (f)

On any legal paperwork or forms, each entity project will be referred by these appropriate terms to keep separate records.

- D. The Contractor will be responsible for the total cost of all services included in this proposal. They will be the only entity allowed to invoice the Maine FRO's for the work provided to overhaul and deliver these buses. The services to be included are:
1. Verify the buses meet criteria for Rebuild (visual inspection)
 2. Rebuild to scope of work in RFP
 3. Deliver and warranty to FRO members initially seeking to purchase.
- E. The Contractor will invoice the same amount to all members of the FRO other than any additional work agreed upon between the Entity and the

Contractor. All invoices shall be due 30 days from date of invoice received.

7. Conformity

All bidders must conform to the final approved specifications listed in the scope of work. The finished product must meet the service life intended. The bid items, which the bidder proposes to furnish, must produce equipment of substantial, durable, and safe construction in all respects. The final product will meet all Federal Transit Administration (FTA) guidelines.

8. Specified Materials

Whenever an item in the specification is identified by reference to brand name, such identification is intended to indicate the quality and characteristics of products that will be satisfactory. Where brand names are used, consider the term "approved equal" to follow. If it is proposed to furnish an "or equal" item, it will be the vendor's responsibility to provide material such as catalog cuts, drawings, and manufacturer's specifications that will allow the municipalities to determine whether the item meets the specification. Written approval for any proposed substitution must be obtained by the bidder during the approved equal period specified in the Appeal procedures.

9. Parts Omission

No advantage shall be taken by the bidder in the omission of any parts or details which are required to make the equipment complete even though such parts or details are not mentioned in these specifications. All units or parts not herein contained or specified shall be of the manufacturer's standard and shall conform in materials, designs or workmanship to the best practice known in the industry. Equipment throughout the bid items shall be so installed that it will be interchangeable among all other items of this type and manufacture. Bidder must submit with proposal detailed specifications, circulars, and all necessary data on items proposed to be furnished. This information must show clearly that the item(s) offered meet all detailed specifications herein. The Maine FRO reserves the right to reject any proposal if its compliance with the specifications is not clearly evident. The submission of the proposal will be construed to mean that bidder is fully informed as to the extent and character of the supplies, materials or equipment required and a representation that the bidder can furnish the supplies, materials or equipment satisfactorily in complete compliance with the specifications.

10. Compliance with Maine and Federal Requirements

All buses having to meet a standard that extends the useful life an additional 5 years under this specification, shall fully comply with any and all applicable requirements of the United States Department of Transportation (USDOT), Federal Transit Administration (FTA), US Environmental Protection Agency (EPA), State of Maine Motor Vehicle Laws and Maine Commercial Vehicle Safety Inspection Laws. Such requirements include, but are not limited to, those imposed by the Americans with Disabilities Act (ADA), Federal Transit Administration Bus Testing Program, Federal Transit Administration Pre-Award and Post-Delivery Audits of Rolling Stock Purchases Regulations, Federal Motor Vehicle Safety Standards (FMVSS), and the Clean Air Act of 1990. The vehicle shall be in compliance with all requirements of State of Maine Transportation Regulation, Federal Motor Carrier Safety Regulations (FMCSR) Federal Motor Vehicle Safety Standards (FMVSS). The contractor shall supply certification that each vehicle complies with relevant FMCSR and FMVSS requirements.

In the event there are changes to any State laws, FMCSR or FMVSS between the date of bid opening and the completion date of the rebuild, any new requirements applicable at the time will be considered separately and price for same determined by mutual agreement of the contractor and the municipal corporation.

11. Disadvantaged Business Enterprise (DBE) and Women Business Enterprise (WBE)

It is policy that disadvantaged business enterprises as defined by 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 23 applies to this agreement. It is therefore agreed that disadvantaged business enterprises as defined in 49 CFR Part 23 will be afforded maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts.

12. Vehicle Pollution Control Requirements

Bidder shall furnish with its bid the motor vehicle pollution control requirements in accordance with the requirements of the Environmental Protection Agency. The following certification shall be in writing:

The horsepower of the vehicle is to be equal or greater for the speed, range and terrain in which it will be required to operate in Maine FRO Standard Revenue Service and also to meet the demands of all auxiliary power equipment.

The vehicle meets all Federal, State of Maine, and Local air pollution regulations.

13. Locations of Technical Service and Parts Representatives

Bidder shall furnish with its proposal the names and locations of technical service and parts representatives responsible for assisting the municipal corporation, as well as the location of the nearest depot which will furnish a complete supply of parts and components for the repair and maintenance of the equipment to be supplied. The parts depot must be located within a reasonable travel distance of the location where the vehicle is housed. The contractor shall supply all part identification numbers related to up-dated parts replaced at the time of the rebuild. A detailed description of all repairs performed and material used to complete the rebuild. Parts and Preventive Maintenance requirements related to the rebuild will be provided at time of delivery to the FRO entity making the purchase.

14. Vehicle Warranty Requirement

Bidder shall furnish with its bid a statement in detail of the warranty on the completed vehicle. This will include start and duration dates with mileage requirements and/or other factors with the method of adjustment in case of failure of component parts (1 year 100% parts and labor).

15. Municipal Exempt Status

The municipal corporation is exempt from the payment of federal, state and local taxes. Taxes must not be included in proposal prices. The municipal corporation will furnish necessary exemption certificates upon request. Any other sales tax, use tax, impost, revenues, excise or other taxes which are now, or which may hereafter be, imposed by Congress, the State of Maine or any other political subdivision thereof and applicable to the sale of

material delivered as a result of the bidder's proposal and which, by terms of the tax law, may be passed directly to the municipal corporation, will be paid by the municipal corporation.

16. Quoted Price Requirements

The price quoted in any proposal shall include all items of labor, material, tools, equipment, and other costs necessary to fully complete the rebuild and delivery of the equipment pursuant to these specifications to be delivered to the municipal corporation.

17. Basis for Award

- A. The specifications and addenda thereto set forth the minimum requirements of the vehicles, parts, service and other deliverables 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 overhaul projects
 - 2. Overall price to complete bus rebuild
 - 3. Dates projected for completion of project, delivered to FRO
 - 4. Projected work plan and project quality assurance and testing procedures
 - 5. Percentage of DBE participation (larger percentage, more point value)

Scoring:	
Section 1	maximum 30 points
Section 2	maximum 30 points
Section 3	maximum 20 points
Section 4	maximum 15 points
Section 5	maximum 5 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

proposal 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 Contractor 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 vendor may request a price adjustment upon renewal of the contract. Such adjustments may not exceed the Producer Price Index for Transportation Equipment, Industry Code 37 published by U.S. Department of Labor/Bureau of Labor Statistics. A listing of the PPI can be accessed on the internet at <http://www.bls.gov/data>. The base period for price adjustments will be the latest version of the Producer Price Index, as defined above, available when the initial contract is awarded to the successful bidder. The base price for escalation will be the price as awarded to the successful bidder in response to this solicitation. The price adjustment shall use the latest version of the Producer Price Index and be made on the anniversary date of the initial award of contract.
- I. Any contract for the purchase of equipment pursuant to these specifications will be subject to the applicable terms and conditions of each municipal corporation's financial assistance agreement with the Maine FRO and the contract of financial assistance between the *Maine FRO* and the Federal Transit Administration.

18. Completion Date Requirements

Bidder shall submit the earliest possible completion date with their bid. Receipt of the equipment from the Contractor’s authorized representative or on common carrier’s manifest by the municipal corporation will constitute delivery. The bidder shall notify the municipal corporation at least five days before delivery of the date on which the equipment will be delivered. In the event of delay in the completion of the delivery of the equipment beyond the date the successful bidder specified, the municipal corporation may consider liquidated damages.

19. Late Delivery Penalty

Timeliness in the delivery of the completed vehicles, ability, and resources of the organization answering the bid and previous familiarity with the products will be important factors in determining the bid award. A complete delivery schedule for the completed vehicle must be submitted with each bid and must be signed by the individual who is responsible to make such a commitment. Failure to meet delivery schedules upon the part of the Contractor will be penalized by a fine of \$100.00 per work day per vehicle and may be deductible from the payment due on the completed units. The penalty will take effect at the completion of 30 calendar days from the promised day of delivery. Any delay caused by an “Act of God” may be a considered for a waiver of penalty. Suppliers, dealers and/or vendors will be responsible for poor workmanship from the date the vehicle is placed in service. Any problem caused by poor workmanship may be subject to a \$25.00 per day per unit fine until the problems have been corrected. Any and all penalties may be waived at the discretion of FRO.

20. Delivery of Completed Equipment

In the event delivery of completed equipment under this contract shall be necessarily delayed because of strike, injunctions, government controls or by reason or any other cause of circumstance beyond the control of the contractor, the time of completion of delivery shall be extended by a number of days to be determined in each instance by mutual agreement between the municipal corporation and the contractor.

21. Terms of Payment

The Contractor will be allowed to incrementally invoice costs at various stages of the execution of this contract.

Stage 1: Reimburse the Contractor for Administrative and Logistical costs associated with the execution of this contract.

Stage 2: After third party oversight program inspection documents approval at each of the following intervals: 60 percent and final inspection/acceptance.

Stage 3: Any AWE (additional work effort) identified, documented and approved by the Consultant and customer (FRO)

All invoices shall be due 30 days from date of invoice received.

22. Municipal Indemnification

The successful bidder must agree to save, keep, bear harmless and fully indemnify the Fixed Route Operators and any of its officers, agents or representatives from all damages, costs or expenses in law or equity that may at any time arise or be set up for an infringement of the patent rights of any person or persons in consequence of the use by the Fixed Route Operators or by any of its officers, agents or representatives of articles supplied under the contract arising from bids submitted and of which the successful bidder and manufacturer are not lawfully entitled to sell, provided the Fixed Route Operators gives the successful bidder and manufacturer prompt notice in writing of any suit and all information necessary to defend same.

23. Appeal Procedures

- A. The Fixed Route Operators reserve the right to postpone bid openings for its own convenience.
- B. Changes to the specifications will be made by addendum.
- C. The Fixed Route Operators reserve the right to schedule a pre-bid and/or pre-proposal meeting(s) with contractors after the solicitation has been offered and before offers are received. This, however, does not relieve contractors from the written, documented requests required by paragraphs (d) and (g) below.
- D. Any protest of the specifications must be fully supported with technical data, test results or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement. In addition, any test requirements in the specifications that pertain to an

item under consideration for approved equal must be submitted with the request for approved equal.

- E. The municipal corporation's replies to requests under paragraph (d) above will be postmarked at least ten (10) days before the date scheduled for bid opening.
- F. Pre-Quote Opening Appeal or Protest: Appeal or protest of the decision of the municipal corporation by a prime contractor or by an adversely affected subcontractor must be in writing and received by the municipal corporation not less than three (3) full working days before bid opening or it will not be considered. Within five days of receipt of the appeal, the municipal corporation will render one of the following determinations listed in paragraph (h).
- G. Post-Quote Opening Appeal or Protest: An appeal or protest of the decision of the municipal corporation by a prime contractor or by an adversely affected subcontractor must be in writing and received by the municipal corporation not less than twenty-four hours before the scheduled time and date for the award of a contract. Within five days of receipt of the appeal, the municipal corporation will render one of the determinations listed in paragraph (h).
- H. Rulings on Appeals or Protest: Within five days, the municipal corporation shall render one of the following determinations:
 - 1. Appeal or protest is overruled;
 - 2. Appeal or protest is substantiated and instructions will be issued to remedy issues related to the appeal or protest;
 - 3. Procurement activity is suspended until written notification by the municipality.
- I. Reviews of protests by FTA will be limited to the municipality's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to the FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. Specific filing procedures are set forth in FTA Circular 4220.1F Third Party contracting Requirements. The municipality will furnish copies of this Circular upon request and provide all necessary information to file a protest with FTA.

24. Bid Review

The municipal corporation will furnish to the successful bidder for its review and approval contract forms and/or documents which definitely relate to its responsibilities as contractor of the equipment.

25. Documents for Securing Vehicle(s)

Adequate documents for securing the equipment to receive the rebuilt shall be provided to the municipal corporation at least fifteen (15) working days before the equipment is scheduled to be delivered to contractor's facility.

26. Insurance Requirements

The CONTRACTOR shall arrange for all risk (peril) insurance for the minimum limits indicated and shall maintain the below listed coverage throughout the period of performance. All insurance policies shall be issued by insuring companies rated no less than A VIII in the most recent "Bests" insurance guide. The general liability, automobile liability and umbrella or excess liability shall name the each FRO member as an additional insured. The workers compensation policy shall contain a waiver of all rights of subrogation against the Maine FRO. Policies shall be broad based coverage for all risk (peril).

	<u>LIMITS</u>
a. Workers' Compensation Insurance	Statutory
Employer's Liability Insurance	\$500,000 each accident \$500,000 disease - policy unit \$500,000 disease - each empl.
b. Comprehensive General Liability (Public Liability) Insurance including:	
General Liability	\$1,000,000 per occur 2,000,000 aggregate
Products, Completed Operations	\$1,000,000 aggregate
c. Automobile Liability Insurance (owned, hired & non-owned):	
Bodily Injury & Property Damage	\$1,000,000 combined single limit
d. Property All Risk (peril)	\$1,000,000
Including inland marine for product transportation ACV	
e. Comprehensive Umbrella Liability	\$1,000,000
f. The CONTRACTOR shall provide a waiver of any rights of subrogation which the CONTRACTOR may have against the OWNER, its agents or its employees.	

- g. Before any of the work is started under this CONTRACT, the CONTRACTOR shall file with each Maine FRO office a certificate of insurance for each bus being purchased containing the following information in respect to all insurance carried:
1. Name of insurance company, policy number and expiration date;
 2. The coverage required and the limits on each, including the amount of deductible or self-insured retentions (which shall be for the account of the CONTRACTOR);
 3. A statement indicating that the OWNER shall receive thirty (30) days notice of cancellation or significant modification of any of the policies which may affect the OWNER's interest; and
 4. The OWNER named as an additional insured on each bus (except Workers' Compensation Insurance). Each Project number shall be listed on each Policy. Example: Project 16-008 (A)

The Maine FRO shall be reimbursed for losses to the extent of its investment in the event of a loss during transit and while in the care and custody of the contractor at the contractor's facility.

PART II
TECHNICAL SPECIFICATIONS & REQUIREMENTS

1. Scope of Work

The purpose of this Scope of Work (SOW) is to purchase rebuilt, heavy duty, 30 – 35 foot, 12 year/500,000 mile buses. The Contractor will perform any necessary repairs to extend the useful life by five years of Pre-owned Transit Vehicles purchased for use with-in the State of Maine and operated by Maine Public Transportation Fixed Route Operators (FRO). The SOW may include repairs to the vehicle frame, body, engine, transmission and sub-components as necessary to extend the vehicle expected useful life an additional five (5) years. This will include corrosion repair, painting of frames and bodies, and applying corrosion retardant coatings. This SOW provides both modest and extensive, cost-saving, mechanical repairs. The specific models to be purchased and repaired by the Contractor will be a mutually agreeable make and model as determined by the Contractor, the FRO, and the FRO Consultant. A Joint Visual Inspection will be performed by the Contractor and the Consultant on all vehicles prior to acceptance under the terms of the contract. Deficiencies not covered under this SOW may be discovered during the repair process; these deficiencies will be reported to the FRO requesting the vehicles. The Contractor will repair these deficiencies only after receipt of proper authorization from the FRO.

2. Background

This program is designed to provide the Maine FRO with pre-owned rebuilt heavy-duty transit vehicles fully capable of providing safe, reliable and economical public transportation at a fair market value. Vehicles received and repaired by the Contractor will comply with Federal Motor Vehicle Safety Standards (FMVSS), Federal Motor Carrier Safety Regulations (FMCSR), Federal Transit Administration (FTA) Grant Management Guidelines, related to Vehicle Rehabilitations associated with transit vehicles for the year the vehicle was manufactured, and the Americans with Disabilities Act (ADA).

3. Applicable Documents

- FMVSS, Maine Commercial Vehicle Inspection Manual.
- Federal Motor Carrier Safety Regulations (FMCSR), Federal Transit Administration (FTA) Grant Management Guidelines

related to Vehicle Rebuilds, ADA Guidelines and Requirements, and water testing.

4. **Repair Manuals**

All factory manuals for engines, transmissions, major components, complete vehicle service records, and line ticket registers will be supplied to the Contractor by previous operators, if available.

5. **General Requirements**

The Contractor will determine a reasonable schedule and shipping information in a timeline sufficient to meet the goals of the FRO schedule whenever possible. The Contractor will follow all FMVSS, FMCSR, and FTA, ADA and Maine State Commercial Inspections rules and regulations. Radio equipment, surveillance equipment, GPS navigation systems, medical apparatus, and any non-standard or other applicable aftermarket upgrades or equipment are not covered under this SOW, unless mutually agreed upon by the FRO, an independent FRO entity and the Contractor or combination thereof. Vehicles shall have a new 12 month State of Maine Inspection sticker.

6. **Detail Tasks following minimum FTA Standard Repair Compliance: Engine Transmission and Associated components:**

I. Engine will meet, or exceed all OEM specifications for the year of engine manufacture date. All electronic controls shall be updated with the latest software versions available.

II. The air intake system shall be thoroughly cleaned. The air filter housing, molded hoses, filter element, and other associated parts with hardware shall be inspected and replaced as necessary.

III. The engine compartment is to be degreased and thoroughly cleaned using pressurized hot water. Engine compartment insulation blanket is to be replaced as necessary. All engine compartment wiring, switches, gauges, solenoids, terminal blocks, and Amphenol connectors, both halves, are to be replaced as necessary. All engine compartment light assemblies are to be inspected and replaced, as necessary. Clearance between the radiator, electrical harnesses and water piping must meet or exceed OEM specifications. All engine

compartment gauges are to be inspected and replaced, as necessary. The rear apparatus box is to be cleaned and repaired or replaced as necessary with new to meet OEM specifications. The rear apparatus box switches, junction block, and magnetic switches and drain boot shall be replaced. **All electrical relays and solenoids shall be replaced.**

IV. Air compressor and governor will meet or exceed OEM specifications.

V. The starting motor will be refurbished as necessary. Starter power cable from the starter to the engine compartment engine is to be replaced with new cable of equal size to the OEM cable. All batteries will be replaced with new OEM compatible batteries.

VI. The transmission assembly and oil cooler assembly shall be refurbished or replaced, if necessary, and shall include all applicable updates issued by the OEM. The transmission software will be updated with the latest software.

VII. The transmission accumulator mounting brackets, straps, and associated hardware shall be inspected and replaced, as necessary. The accumulator and plumbing shall be inspected and replaced as necessary. The transmission retarder solenoid valve, pressure switch, and pressure protection valve shall be inspected and replaced, as necessary. All associated retarder control plumbing, electrical, and mounting hardware shall be inspected and replaced, as necessary.

VIII. Rebuild the drive shaft assembly to bring to OEM specifications. Propeller shaft shall be rebuilt with new universal joints, lock washer, dust cap, and grease fittings. The slip joint of drive shaft must be brought to as new condition or replaced with parts meeting or exceeding OEM components. Drive shaft grease fittings must be in alignment with one another. Fuel filters and all fuel lines within the engine compartment are to be replaced with new. The fuel tanks are to be pressure checked; if defective, they will be replaced with new units. All tank/brackets will be checked and repaired as needed. All fuel lines outside the engine compartment will be inspected and replaced if there are any signs of wear. All

lines are to be bracketed and routed in the original OEM configuration.

IX. The exhaust system is to be inspected and replaced as necessary. All flexible exhaust piping is to be replaced with new. All exhaust blankets are to be inspected and replaced as necessary.

X. The radiator and charged air cooler system will be flushed and tested. All components of the 12-volt charger are to be inspected, tested, and replaced as necessary.

XI. The 24-volt voltage regulator and equalizer are to be inspected, tested, and replaced, as necessary.

XII. All rubber belts will be replaced with new.

XIII. All engine compartment hoses and clamps will be inspected, torque or replaced, as necessary.

XIV. All engine filters will be replaced as well as all cabin and A/C filters will be replaced with new.

7. Underbody

- A. The vehicle undercarriage shall be cleaned by high-pressure washing with a degreasing agent. Areas to be cleaned include, but are not limited to, the attaching areas of all mild steel structural members, bulkheads, axle beams, rear axle, and suspension area.
- B. All loose undercoating is to be removed to allow for full access to inspect the structure.
- C. This process shall also be performed prior to the application of corrosion protection to ensure there is no residual contamination to prevent the coating from adherence.

8. Structural Members

After cleaning and before the application of corrosion protection material, all structural members, posts, gussets, and frame members shall be inspected for cracks, corrosion, deformations, loose or missing fasteners,

and structural or accident damage. Damaged components shall be repaired or replaced with new components. All repairs to the structure shall be according to OEM and standard industry practice. Materials used shall be of the exact measure and composition of the material removed for repair. Fasteners showing wear or corrosion shall be replaced with new fasteners. All fasteners for new items shall be SAE J386 Grade 8 bolts or approved equal. The exit door frame structure is to be fully inspected for cracks or structural damage. Necessary repairs will be performed.

9. **Mud Flaps and Splash Aprons**

- A. New heavy-duty OEM or equal mud flaps shall be installed on the rear wheel well with OEM OR EQUIVALENT approved material. The measurement of ground clearance for the front and rear aprons shall be with the vehicle at curb weight, set on level ground at the OEM- recommended ride height. New fasteners will be used to attach the aprons. Flat washers are to be used under the self-locking nuts. ("Nyloc" type locking nuts are not acceptable.) New heavy-duty OEM equivalent splash aprons shall be installed.
- B. The front apron shall be installed on the bulkhead behind the front axle and shall extend the full width across the vehicle and downward to a point within three (3) inches from the ground.
- C. The rear aprons shall be extended to within three (3) inches of the ground and cover the width of the rear duals only.
- D. The dimension for the measurement of ground clearance for the front and rear aprons shall be with the vehicle set on level ground at the OEM ride height.

10. **Corrosion Protection**

All exposed mild steel housing, bulkheads, plating, posts, structural, and framing surfaces under the vehicle shall have high quality undercoating properly applied to prevent corrosion. Corrosion protection shall be applied when the undercarriage is thoroughly clean and dry to ensure coating adherence. Areas of light, damaged or missing undercoating shall be covered. All other areas of the vehicle shall be protected from overspray, or cleaned if sprayed. All dissimilar metals are required to have corrosion

protection applied. **Unit shall be water tested for leakages per specifications.**

11. **Air System**

- A. The air system shall be restored to like-new condition. The air compressor shall be refurbished or replaced with a new OEM or Equivalent unit if necessary. All air system valves and associated parts shall be inspected and replaced with new OEM or Equivalent components as necessary. A new 24 volt condenser/separator will be installed after air compressor and before air dryer, or as per manufacturer's recommendations. New air fittings shall be DOT –rated push-to connect fittings. A new 24 volt air dryer with heating element shall be installed with purge valve and heater assembly.
- B. Air tanks shall be thoroughly cleaned. Tanks that fail a pressure test or have other damage shall be replaced with new tanks.
- C. The driver's control valves such as door valves, air system, etc. and relays shall be inspected and replaced with new OEM or Equivalent components as necessary. All parts and labor shall carry a one warranty on vendor supplied parts.
- D. Final test: Perform an Air Test to insure Air Pressure retention overnight. Ninety (90) lbs, required left in reservoirs.

12. **Exhaust/Emissions Systems**

The entire exhaust system, including DPF filters, shall be inspected and cleaned to original OEM specifications. All clamps, isolators, and any attaching hardware shall be inspected and replaced, if necessary, with new OEM or Equivalent approved components as necessary. The emissions control system shall be completely serviced and all sensors and other necessary components inspected and in proper working order. Upon completion of all engine and emissions system work, the vehicle shall meet the performance standard set by the EPA for the year of MFG.

13. **Radiator/Cooling System**

The radiator assembly and charge-air cooler shall be thoroughly cleaned and pressure tested for integrity or replaced, as needed. Top radiator hanger and bolts shall be inspected and replaced, as necessary. Isolation

mounts shall be replaced with new mounts. New extended life coolant shall be installed, protected to -30 F. Remove, IROAN & Test and reinstall.

The surge tank shall be cleaned, inspected and pressure-tested. The surge tank relief valve assembly, sight glass, all gaskets, low coolant probe, insulating washers and retainer shall be replaced with new components as necessary. All hoses and clamps shall be replaced. New hoses shall be silicone, meeting or exceeding OEM specifications. Clamps shall be constant-torque, stainless steel. All coolant lines shall be routed and bracketed in the original OEM configuration. The radiator shall be painted with a corrosion-resistant coating; the surge tank shall be similarly coated unless it is stainless steel.

14. Climate Control System

Cooling fins shall be cleaned. The system shall be evacuated and all hoses and clamps shall be inspected and replaced, as necessary. New hoses shall be silicone, meeting or exceeding OEM specifications. Clamps shall be constant-torque, stainless steel. Any valves found to be defective in any way shall be replaced with new components. System shall be recharged with most current refrigerant. All air-conditioning shall be cleaned and flushed.

All condenser and evaporator fan motors shall be inspected and tested or replaced as necessary with OEM OR equivalent specification motors as necessary. All insulation shall be replaced on all system tubing.

The water circulation pump and water valves shall be restored to OEM specifications or replaced, as necessary.

The HVAC system wiring shall be inspected and any loose or defective wiring shall be replaced. All filters in the HVAC system including those in the driver's area shall be replaced with new OEM or equivalent filters, as necessary. Any loose or damaged insulation around the HVAC unit shall be replaced. The HVAC system shall operate in accordance with OEM specifications upon completion of the work.

15. Suspension

All suspension component fasteners shall be replaced, if necessary, with new OEM OR EQUIVALENT and torque to OEM specifications with a contrasting color torque stripe affixed across the rotating fastener and an

adjoining fixed component and shall be in a location easily seen by an inspector.

Radius rods, sway bar links, all fasteners, sway bar bushings and clamps, roll pins, lateral rod brackets. U-bolts, bumpers, spacer washers, washers, retainer washers, and washers with shoulders shall be replaced if necessary with new.

Mounting towers that are cracked or deformed will be replaced with new.

All front axles not within OEM tolerances shall be refurbished or replaced using accepted industry practices, as necessary.

16. **Shocks**

All shock absorbers and bushings will be replaced with new components meeting or exceeding OEM specifications. Both front and rear shock mounts shall be replaced, if necessary. All bolts shall be torque to OEM specifications.

17. **Bellows Assemblies**

- A. All bellow assemblies, including plates, pistons and adaptors, shall be removed and replaced with new high quality components, if necessary.
- B. The front and rear bellows and shock absorber mounting towers shall be inspected for cracks or deformities and replaced if OEM specifications are not met.
- C. The bottom shock absorber mounting area shall be checked for cracks, elongated mounting holes and other evidence of deformation or damage.
- D. Those with elongated mounting holes or other forms of deformation will be replaced with new high quality materials.
- E. All suspension bolts, nuts, and washers needing replacement will be replaced with new OEM OR EQUIVALENT approved equals.

18. Axle Stops and Bumpers

- A. All axle stops and bumpers shall be inspected and replaced, as necessary. Radius Rods, Bushings and Brackets shall be inspected and replaced, as necessary.
- B. Rear radius rod mounting pins and beam supports needing replacement shall be replaced with OEM OR EQUIVALENT parts. All bolts shall be replaced with new OEM OR EQUIVALENT bolts and shall be torque to OEM specifications.
- C. The front radius arm assemblies and associated hardware will be replaced if necessary with new components. Front lateral rods shall be replaced with new lateral rods. All bolts and nuts shall be torque to OEM specifications. All suspension hardware shall have torque putty or a mark indicating the torque has been properly set. The mark shall be a contrasting color and applied to the face of the hardware in plain view.
- D. All radius rod bushings shall have never-seize type protection before installation into the vehicle, none between the bushing and the rod.

19. Leveling Valves

Leveling valves shall be replaced and the ride height shall be adjusted to the vehicle manufacturer's original specification. Ride height shall be checked with the vehicle at curb weight, parked on level pavement.

20. Axles, Steering and Wheels

- A. If necessary, the following components shall be replaced with new:
 - Kingpins, kingpin bushings, thrust bearings (no ream)
 - Tie rod ends
 - Drag link ends
 - Steering Shaft U-joint
- B. Component installation shall conform to OEM recommended practice, using the required tooling. Components shall be properly lubricated after installation.

- C. The spindle assemblies will be refurbished in accordance with OEM Specifications.
- D. All drag links and tie rod ends, including all shafts, are to be inspected and replaced, as necessary, with new OEM or equivalent parts.
- E. The front axle assembly shall be removed, completely disassembled and reconditioned with new OEM or equivalent bearings and gasket seals.
- F. If necessary, the rear axle assembly shall be removed, completely disassembled and reconditioned with new OEM or equivalent bearings, gasket seals, bushings and gears. Axle shafts shall be inspected and replaced if they do not *meet* OEM specifications. Final drive housing shall be inspected and if they do not meet OEM specifications they will be replaced.
- G. Wheel hubs shall be inspected for defects and if damaged, replaced with new OEM or Equivalent hubs. All wheel bearings, races, seals and gaskets shall be inspected and replaced with new OEM or Equivalent components, as necessary. All front and rear wheel mounting studs and lug nuts shall be inspected and replaced, as necessary, and properly torque to OEM specifications. All lug nuts shall receive new wheel check high heat orange indicators after the proper torque is applied.
- H. Hubs must be removed, disassembled, cleaned, corrosion removed, and inspected. Hubs with cracks and damage will be replaced with new.
- I. Dust caps must be replaced with new.
- J. A 4-Wheel alignment will be performed prior to delivery.

21. **Brake System**

- A. All brake spiders shall be inspected to meet OEM specifications and replaced if requirements are not met. All bolts shall be torque to OEM Specifications. Brakes shall be restored to OEM specifications.
- B. All components will be torque to OEM specifications.

- C. All S-cams, seals, bearing and bushings will be replaced with new. Brake drums will be refurbished (turned) or replaced with new.
- D. Brake shoes will be qualified in accordance with APTA BT-RP-005-03 Recommended Practice for Transit Vehicle Brake Shoe Rebuild.
- E. All brake block retaining hardware, wedge bolts, anchor pins, rollers, O-rings and brake springs and clips shall be completely replaced with new components.
- F. Wheels will have all rust and corrosion removed from the exterior and wheel mating surfaces prior to inspection.
- G. All wheels will be inspected for deformities and cracks, with emphasis on the lug holes.
- H. Defective wheels will be inspected and replaced, as necessary.

22. Air Valves and Hoses

- A. All valves and hoses associated with the brake system shall be replaced with new OEM or Equivalent valves and hoses, if necessary. Valves to be replaced include but are not limited to:
 - Parking brake relay valves
 - SR-I valve
 - Service brake relay valves
 - Treadle valve (brake application valve)
 - All check valves
 - All QR-1 valves
 - All ABS-related valves
 - Interlock system valves
 - Pressure protection valves
 - Brake and accelerator valves and linkage
- B. Brake Chambers: All air lines and/or tubing, both flexible and rigid, shall be tested, inspected, and replaced as required. Line supports and fittings shall be inspected and replaced as required. If required, replacement hoses, fittings, line supports, hardware, etc. shall be to OEM specifications.

- C. All front and rear brake chambers are to be replaced with new OEM or equivalent units.
- D. All rubber air lines mounted to the chambers are to be replaced with new.
- E. The chamber stroke length will be measured to insure proper operation.
- F. All hardware to connect the chamber to the slack adjuster is to be replaced.

23. **Slack Adjusters**

If necessary, automatic slack adjusters shall be replaced with matching OEM or Equivalent slack adjusters, installed in accordance with the manufacturer's specifications.

24. **ABS System**

All anti-lock brake system (ABS) sensors shall be replaced with new sensors. Sensors shall be properly adjusted to OEM specifications to the pulse rings on the hubs. ABS sensor harness connections shall be weather-tight.

There are to be no modifications made to the ABS harnesses.

25. **Warranty and Testing**

Brake system shall be fully tested before each vehicle is returned to FRO. Prior to delivery from the Contractor's facility the following tests shall be performed on the vehicle's air system:

- The vehicle shall be started and run at idle. The vehicle shall charge the Air system from forty (40) psig to the governor cut-off pressure in less than three (3) minutes.
- The vehicle shall be started and the air system shall be charged until the Governor cut-off is reached. The vehicle will then be shut down. The vehicle shall not leak down more than five (5) psig as indicated on the instrument panel mounted gauges, within(15) minutes from the point of governor cut-off.
- If the vehicle does not successfully complete the air system tests, the air System shall be re-inspected and all necessary

repairs performed. After the repairs are completed the above tests shall be repeated until passed.

26. Interior

- A. The Contractor shall inspect the interior for necessary work. Sharp edges or hazardous protrusions shall be removed. All interior panels and fixtures shall be securely fastened with tamper-proof fasteners. Modesty panels, seats, stanchions and passenger assists shall be made secure and rattle-free. All passenger seating configurations must be approved by FRO Consultant.
- B. The Contractor shall make every effort to eliminate audible rattles and unnecessary interior noise.
- C. All missing, corroded, stripped or imperfect fasteners shall be replaced with corrosion resistant fasteners or the correct size and thread and shall be installed per OEM specifications.
- D. Driver's Compartment
 - Dash panel lights shall be replaced as required. Cracked dash panels shall be replaced with new panels and reinforced. Worn or missing labels for driver controls shall be replaced.
 - All driver controls shall be checked for proper operation. The brake and accelerator pedals shall be replaced with new pedals. Driver sun visors shall be checked for proper operation and necessary repairs made.
 - All driver sun shades shall be in working order. If worn, torn, or otherwise damaged, will need to be replaced with new OEM OR EQUIVALENT approved sun shade.
 - The driver's side window frame shall be removed and thoroughly cleaned. Any damaged or corroded window track shall be replaced with new track. Any cracked scratched or chipped glazed shall be replaced. When reassembled the window shall be tested for ease of operation.
 - All glass shall pass the standard for Maine State Inspection.

E. The following items shall be provided in the driver's area of each vehicle:

- Properly-charged fire extinguisher
- Safety triangle kit
- First-aid kit
- Two (2) Wheel Chock Blocks secured
- Body Fluid Kit
- Belt Cutter and Glass Breaker

F. Driver Seats: The driver's seat in each vehicle shall be replaced with a new Recaro driver seat or equivalent. Alterations from Recaro must be approved by FRO. Each seat shall be equipped with a lap belt complying with FMVSS 207 & 210. The belt shall be of the maximum length, having an automatic retractor on the left side, and the mating part on the right side shall be as short as possible. Belt color shall be safety orange.

G. All upholstery will be deep cleaned using a commercial system.

- Passenger seats are to be inspected. Any seat with a tear, rip, or stain that cannot be removed, that has loose material, or is worn thin, shall be re-covered in upholstery fabric to match the remainder of the seats in the vehicle.
- Passenger seat frames and other components will be repaired or replaced if needed. Seats will be attached to the body of the vehicle per OEM specifications. The seat padding is to be inspected and replaced with new durable padded seat inserts of OEM thickness and composition. All the padding need not be changed, only add enough to bring the seat padding up to OEM thickness and composition.

27. **ADA Accommodations**

All ADA-required passenger accommodations shall be thoroughly inspected for proper functionality and defective components shall be replaced as necessary. Wheelchair restraints shall be checked for safety and retraction. Belts shall be cleaned. Securement pockets shall be cleaned of dirt and

debris. Flip seats shall be checked for proper operation and repairs made, as necessary.

28. **Interior Lighting**

All interior passengers lighting, engine lighting, and exterior lighting will be retrofitted to current OEM specifications for LED lighting.

29. **Destination Signs**

- A. If necessary, the rubber gasket around the front destination sign glass shall be replaced on all vehicles. The Contractor shall ensure that the new gasket is properly installed, such that there are no water leaks.
- B. Exit Signals & Public Address System: "Stop Requested" signs shall be cleaned and checked for proper operation. All chime cords shall be replaced with new approved cable, coated with yellow plastic. Chime signals shall be checked for proper operation and defective components shall be replaced. The public address system shall be inspected for proper operation and any defective.

30. **OEM Floor and Floor Covering**

- A. With the exception of the Driver's platform, the floor covering is to be removed and replaced, if necessary.
- B. After removal of the flooring, the plywood floor will be inspected for damage, cracks, rotting, and de-lamination, and repaired or replaced, as necessary.
- C. New marine grade plywood shall be to OEM specifications and installed with stainless steel bolts to OEM specifications.
- D. Repair shall be made for any separation between floor and wheel well wall.
- E. All rivets in the wheel well tubs will be replaced with stainless steel rivets at the floor level.
- F. The plywood surface shall be smooth, clean, and properly conditioned to provide maximum adhesion of the flooring.

- G. The front entrance area and center aisle shall be covered with ribbed flooring material not less than 5/16 inches thick per OEM or equivalent.
- H. The floor covering in the vestibule shall be steel reinforced with the entrance area and standee area separated by a molded yellow strip at least two (2) inches wide. The standee line shall extend from the base of the driver's barrier to the base of the modesty panel.
- I. The entrance door step riser shall be replaced with new steel reinforced flooring with yellow nosing.
- J. The floor covering under the seats shall be smooth rubber not less than 3/16 inches thick.
- K. The flooring around the front and rear wheel wells will be so installed as to prevent punctures by high heels or other sharp objects.

31. **Ceiling and Wall Panels**

Ceiling and wall panels shall be thoroughly inspected and detailed to a like new condition.

32. **Body Exterior**

- A. The Contractor shall replace any scratched, chipped, cracked, or broken windshields. New rubber gasket material shall be installed around the windshields and checked for water leaks after installation.
- B. Passenger window frames shall be removed and thoroughly cleaned. Damaged or corroded window track shall be replaced with new track. Inoperative hardware shall be replaced. Any cracked, scratched or chipped glazing shall be replaced with glazing having the same tint density as the other windows in the vehicle. When reassembled, windows shall be tested for ease of operation. Egress windows shall be tested for proper operation in an emergency. New emergency egress window decals shall be installed.
- C. Passenger doors shall be thoroughly cleaned and serviced. Loose panels shall be repaired. Any worn, damaged or defective door

components shall be replaced. Lighting at doorways shall be replaced with lights providing the level of illumination required by ADA. All sensitive edges on doors shall be checked for proper operation and defective.

- D. Rubber door edges and brushes on the bottom edge of door panels shall be replaced. Door closing speeds shall be checked and adjusted, as necessary.
- E. Access doors and panels, including but not limited to, the rear engine access door, curbside and street side access panels at the rear of the vehicle, and the electrical compartment access panel located below the driver's window, shall be completely reconditioned. The accessible area behind each door or panel shall be steam-cleaned or power-washed where practical. All hardware shall be replaced with new hinges, springs, latches, prop rods, gas cylinders and bumpers installed. Insulation material shall be removed and replaced with new material. Seals around each door or panel shall also be replaced.
- F. Damaged access doors and panels shall be repaired or replaced as necessary and adjusted to ensure the doors lay flush to the vehicle body with even spacing and operate properly.
- G. All skirt and body panels shall be repaired or replaced, as necessary, to OEM specifications; structure tubing that has been damaged shall be repaired or replaced to OEM specifications with new corrosion protections applied.
- H. Replaced panels shall be attached to the frame in accordance with OEM procedures.
- I. The underside of all new panels shall have primer applied to prevent corrosion.
- J. Sika Flex or Equivalent shall be used for attaching side panels to frame.
- K. Exposed and new frame structure and the underside of panels shall be thoroughly cleaned and then protected with "Cora Shield" or Equivalent.
- L. All wheel opening fenders that are damaged will be replaced.

- M. Front and rear bumper covers shall be inspected and replaced, as necessary.

33. **Battery Compartment**

- A. The battery compartment of each vehicle shall be thoroughly cleaned and completely restored. The battery tray shall be removed and replaced with a new tray, including slides and latches.
- B. Battery cables shall be inspected and replaced, as necessary. New approved batteries will be installed. The battery compartment door shall be reconditioned with new insulation and hardware including hinges, props and latches. New battery compartment decals shall be applied. Die Electrical grease and battery corrosion protection on all electrical components is required.
- C. Battery disconnect switch will be replaced with new OEM or equivalent switch or approved equal.
- D. The battery tray rollers will be replaced, as necessary.
- E. The battery cover will be inspected and repaired and replaced, as required.
- F. The electrical master switch shall be replaced with an approved equal.
- G. All batteries will be replaced with OEM rated standards.

34. **Rubber Wheel Well Molding**

Rubber shall be replaced with new wheel well molding. Wheel well molding shall be attached to the wheel well.

35. **Exterior Lights**

All exterior lamp assemblies including Headlights, marker lights, stop lights warning lights, lights at passenger doors and front side and rear turn signal lights shall be repaired or replaced with equivalent approved LED lights with rubber mounting gaskets with vendor supplied components.

36. **Rub rails and Molding**

The rub rail and rubber molding on each vehicle shall be carefully inspected. Missing and damaged portions shall be replaced with new material and gaps between sections of molding material shall be eliminated.

37. **Roof Hatches**

- A. All roof hatch units shall be cleaned and inspected to ensure proper operation for both ventilation and as a means of egress in an emergency. Seams shall be re-caulked. Damaged or inoperative hatches shall be replaced with new approved replacement units.
- B. Roof seam and cap seams and the roof hatch seams are to be inspected and resealed as required.
- C. Drip edges shall be inspected and repaired, as necessary, and loose or missing attaching rivets shall be replaced.

38. **Air Deflectors**

Air deflector vents at the front of the vehicle, designed to divert fresh air into the driver's area, shall be checked for proper operation. Inoperative vents shall be repaired or replaced.

39. **Ramp Replacement**

- A. The front step well wheelchair ramp assemblies shall be replaced with new ramp assemblies, identical in dimension and having at a minimum, the same capacity as the old lift. New ramps shall carry a minimum one (1)-year manufacturer's warranty. Each ramp shall be replaced with the OEM or Equivalent specific ramp.
- B. Bent skid plates beneath the ramp shall be straightened or replaced

40. **Painting**

- A. The Contractor shall take steps to ensure that any body damage, including dents, scratches, rust, cracked fiberglass caps or panels and other damage on each vehicle is properly repaired. Repairs shall be completed prior to painting. All loose and damage trim pieces shall be repaired and properly secured to the vehicle. Particular

attention will be give to the radiator charge air cooler, and other sensitive areas to prevent over-spray.

- B. All surfaces to be painted shall be first sanded and cleaned of dust or residue. Primer shall be appropriate for the finish paint. All surfaces are to be primed and sanded prior to finish paint.
- C. Paint finish material shall be approved by FRO. Repainting shall be OEM quality. Paint shall be applied smoothly and evenly, with all surfaces free of dirt, runs, sags, orange peel, and any other imperfections. Paint finish shall be a minimum of 3 mil thickness per coat, applied and baked per the manufacturer's specification. Old paint lines shall not show through the new paint. Contractor shall be responsible for cleaning any areas of overspray. The application of decals, including vehicle numbers, shall be consistent with FRO's existing fleet. A recommended decal supplier of FRO discretion must be used to supply decal branding and logos. FRO will supply a paint and decal schematic.
- D. The bus shall be cleaned both inside and out and be ready for service.

41. **Requisition of Vehicles**

The Contractor will direct and transport specific vehicles to and from their facility at the program expense. The FRO will coordinate with the Contractor prior to directing vehicles to the facility.

42. **Disposition of Parts Removed**

Parts removed during the repair that are not reutilized will be disposed of in accordance with Federal, State and Local laws and ordinances.

43. **Materials**

All parts and materials used will meet or exceed OEM specifications.

The Recycling of retired assets supplied to the Contractor and In-House fabrication of parts and materials will be utilized as a cost savings effort for the FRO and the Contractor. Service records indicating a recent major repair will be directed to FRO for evaluation and will take precedents over this SOW.

44. **Quality Assurance**

An Independent Inspection Consultant will monitor the quality of repairs throughout the repair process. A thorough final inspection of repairs and workmanship will be conducted including a 50-mile road test. All deficiencies identified under this SOW, and any additional approved work effort, will be completed to specifications prior to vehicle release to the FRO.

45. **Vehicle Transportation costs**

The FRO is not responsible for any costs associated with transporting the vehicle(s) to and from the Contractor's repair facility.

46. **Contractor Warranty**

The Contractor will warranty repairs performed under this SOW for a period of one year on paint and workmanship from the date of shipment. The Contractor's warranty only applies to work performed. The Contractor does not warrant the condition or suitability for use of any mechanical part and/or component it does not repair. For customer comments or questions regarding this warranty, please contact the Operations manager (please *insert contact name, contact number and email*).

47. **Additional Mechanical Repair and Upgrade Options (Not covered in this SOW):**

Any and all upgrade options to be finalized after inspection process have been completed.

48. **Disclaimer**

The Contractor reserves the right to reject any vehicle with excessive corrosion and/or parts requirements which exceed program limitations for hours, parts or cost.

49. **Tires**

Each individual FRO will be responsible to provide new or Recap tires to the Contractor for the bus being done for them. They will also receive any tires being removed from the buses they will receive be replaced.

Part III

PRICE PROPOSAL AND VARIOUS FORMS

Bid Proposal	_____
Addenda Page	_____
Sample Contract for FRO and Contractor	_____
Request for Approved Equals	_____
Vendor Acknowledgement Sheet	_____
DBE Participation Forms	_____
Certification Regarding Lobbying	_____
Certification Regarding Debarment and Suspension	_____
Non-Collusive Bidding Certification	_____
Equal Employment Opportunity	_____
Buy America Provision Sheet	_____
Locations of Technical Service & Parts Representatives (per Section 8 of IFB)	_____
Vehicle Warranty Requirements (per Section 9 of IFB)	_____
Certificates of Insurance for all buses (Liability and Damages)	_____

Please be sure you have signed and return the forms required to fulfill the Requirements of this proposal/bid. There are forms contained in the Federal Section that must be returned signed, as well.

BUS OFFER COST FORM

This form must be returned with proposal.

_____ :
Company Name

The undersigned hereby agrees to furnish the equipment and services listed below pursuant to and in compliance with the request for Proposal/Bid, Instructions to Proposers, Technical specifications and the terms and conditions, which have been referenced herein this document

Purchase cost **per bus**, including all labor, parts, transportation, rebuilt and delivered to each FRO entity:

Labor costs	\$ _____
Parts costs	\$ _____
Administrative and Logistical costs	\$ _____
Bus Purchase cost	\$ _____
Total Cost / Bus	\$ _____
Total Project cost (6 buses)	\$ _____

Authorized Company Representative: _____

Printed Name, Title and Date: _____

ADDENDA PAGE

The bidder acknowledges receipt of the following addenda to the Documents (Give number and date of each):

Addendum No. _____, dated _____

Failure to acknowledge receipt of all amendments may cause the bid to be considered not responsive to the Invitation, which would require rejection of the bid.

Sample Contract

Between

(FRO Member)

And

(Vendor)

*Contract made this _____ day of _____, 20__ by and between _____
(Vendor name and address) hereinafter referred to as CONTRACTOR, and the AWARDING FRO member; having its office and principal place of business at FRO members ADDRESS hereinafter referred to as the FRO Entity.*

WITNESSETH:

Inconsideration of the premises and mutual covenants and agreements herein contained, it is hereby agreed by and between the parties hereto as follows:

The Contractor agrees to furnish _____
(Describe equipment to be purchased including options)

To FRO entity in compliance with the Bid Proposal including the Instructions for Proposers and Technical Specification for this project, and the additional equipment or options listed above in accordance with FRO entities approved federal Section 5307/5339 project. Said Bid Proposal including Instructions for Proposers and Technical Specifications is made part of this Contract by reference;

50.FRO entity agrees to pay to the Contractor, and the Contractor agrees to accept, in full payment for the performance of this Contract _____ said payments to be made (Exact payment amount in words and numbers) within 30 days upon certification by the FRO that such equipment described above has met the Progressive payment plan as described in the RFP.

(1) The attached federal and State clauses and each and every provision of law and clause required by applicable laws to be inserted in this Contract shall be deemed to be inserted herein, and this Contract shall be read and enforced as though they were included herein; and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon the application of either party, this Contract shall forthwith be physically amended

to make such insertion.

This Contract shall inure to the benefit of and be binding upon the successors and assignees hereto.

This Contract will continue for a total period of five (5) years. Purchases may be made with the option to purchase up to as many vehicles as agreed between the Contractor and the FRO.

In witness whereof, the respective parties hereto have caused this Contract to be executed by their duly authorized representatives and their seals, if any, to be affixed hereto this day and year first above written.

(Seal)

BY:

(Vendor Name)

(Vendor Representative Signature)

(Vendor Representative Title)

(Seal)

BY:

(Individual FRO name)

(FRO Representative's Signature)

(FRO Representative's Title)

REQUEST FOR PRE-OFFER CHANGE OR APPROVED EQUAL

This form must be used for requested clarifications, changes, substitutes or approval of items equal to items specified with a brand name, and must be submitted by September 16, 2015 with proposal. Any request for any approved equal or protest of the specifications must be fully supported with technical data, test results or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement. In addition, any test requirements in the specifications that pertain to an item under consideration for approved equal must be submitted with the request for approved equal.

Request #: _____

Offeror: _____

Page # in Specs: _____

Section: _____

Question/Clarification or Approved Equal: _____

Response to Request by Municipality: _____

VENDOR ACKNOWLEDGMENT

STATE OF _____ SS:
COUNTY OF _____

On this _____ day of _____, in the year _____,
before me personally came _____ to me known, who,
being by me duly sworn, did depose and say that he resides in
_____; that he/she is the
_____ of the
_____ the corporation described in and which
executed the foregoing instrument; that he knows the corporate seal of the said
corporation; that the seal affixed to the said instrument is such corporate seal; and that
it was so affixed by order of the Board of Directors of the said corporation, and that
he/she signed his/her name thereto by like order.

Notary Public

DBE PARTICIPATION FORM

The Maine FRO has set a specific goal for this project at .4%
This specific goal is set using the State of Maine target.

Bidder must check the appropriate box, provide the information requested, sign and submit this form with its bid. Failure to complete and submit this form may result in rejection of the bid as non-responsive.

[] Bidder will meet the DBE goal for this contract. Bidder is certified according to requirements of DOT 49 C.F.R. Part 26 as a DBE eligible for participation in DOT assisted contracts, and will be performing _____ percent (_____%) of the contract work.

[] Bidder will meet the DBE goal for this contract. If awarded this contract, bidder will subcontract with the DBE(s) listed below which will be performing a total of _____ percent (_____%) of the total dollar amount of contract work. Each DBE listed below is certified according to requirements of DOT 49 C.F.R. Part 26 for participation in DOT assisted contracts.

DBE Name Amount of <u>and Address</u> <u>Work</u>	Description <u>of Work</u>	Percent of Dollar <u>Total Contract</u>
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(Attach additional sheets)

[] Bidder does not meet the DBE goal for this contract. Bidder certifies that it has made good faith efforts in accordance with the Invitation for Bid to meet the DBE goal, but, despite those efforts, has been unable to meet the goal. The Good Faith Efforts Documentation Form is attached to this Participation Form.

Date: _____

Signature: _____

Name (Print): _____

Title: _____

DBE GOOD FAITH EFFORTS DOCUMENTATION FORM

DBE GOAL: .4%

If bidder has indicated on the DBE Participation Form that it does not meet the DBE goal, bidder must submit this form with its DBE Participation Form as documentation of its good faith efforts to meet the goal. Failure to submit this form with its bid may render this bid non-responsive. The Maine FRO may require that bidder provide additional substantiation of good faith efforts.

Date Firm and Contact Person Area of Expertise

1) _____

Response

Date Firm and Contact Person Area of Expertise

2) _____

Response

Date Firm and Contact Person Area of Expertise

3) _____

Response

CERTIFICATION OF RESTRICTIONS ON LOBBYING

(Must be returned with your offer)

I, _____, hereby certify on behalf of the Maine Fixed Route Operators that:

No appropriated Federal funds have been paid or will be paid, by or on behalf of the undersigned to any person influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal Grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the awards documents for any and all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction is made or entered into. Submission of this certification is prerequisite for making or entering into this transaction as imposed by Section 1352, Title 31 USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Executed this _____ day of _____, 2015

By: _____

(Signature of Authorized Official)

(Title of Authorized Official)

CERTIFICATION REGARDING DEBARMENT

(Must be returned with your offer)

To be submitted on all contracts reasonably anticipated exceeding \$25,000.00 in value.

THE UNDERSIGNED PROPOSER, OFFERER, OR SUBCONTRACTOR ("ATTESTER") CERTIFIES, TO THE BEST OF ITS KNOWLEDGE AND BELIEF THAT:

The attester and/or any of its principals or subcontractor:

Are not presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any Federal Agency.

Have not for a three (3) year period proceeding this offer, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offences in connection with obtaining, or attempting to obtain, or performing a public (Federal, State, or Local) contract or subcontract: violation of Federal or State antitrust status relating to the submission of offers, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

Are not presently indicted for, or otherwise criminally or charged in any civil action by a government entity with commission of any of these offenses enumerated above.

The Attester has not, within a three (3) year period preceding this offer, had one (1) or more contracts terminated for default by any governmental agency.

"Principals", for the purpose of this certification, means officers, directors, owners, partners, and persons having a primary management or supervisory responsibilities within a business entity.

This certification concerns a matter that may be within the jurisdiction of an agency of the United States and the making of false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, USC.

The Attester shall immediately notify the Procurement Department at any time the attester learns that its certification was erroneous when submitted or has become erroneous.

A certification in which any of the items detailed above exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Attester's responsibility. Failure of the Attester to furnish a certificate or provide such additional information as requested by IPTC may render the Attester non-responsive.

Nothing contained in the forgoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

If it is later determined that the Attester knowingly rendered an erroneous certification, in addition to other remedies available to Maine FRO, the Authority may terminate the contract resulting from this solicitation for default.

If Attester is unable to certify to any of the statements in this certification, attach an explanation to this certification.

Certification Regarding Debarment Continued

(Signature of Authorized Company Official)

Company Name TYPED

(Title of Official, Including Name, Typed)

AFFIDAVIT OF NON-COLLUSION

The undersigned, having submitted a bid, quote, or proposal for Request for Purchase of used, rebuilt, heavy duty 12 year buses, do hereby swear:

That said bidder, quoting party, or proposer has not directly or indirectly entered into any combination, collusion, undertaking, or agreement relative to price to be bid by any person, or to prevent any person, or persons, or company from submitting pricing: or to entice any bidder, quoting party, or proposer to refrain from pricing for such supplies, merchandise, service, or contract, and that said bid so made is without reference or regard to any other bid or bids, and without agreement, understanding or combination, either directly or indirectly, with any person or persons, with reference to such bidding in any way or manner whatsoever.

Signed: _____

Proposer or Agent

State of _____

SS:

County of _____

Subscribed and sworn before me this _____ day of _____ 2015.

My commission expires: _____

Notary Public SEAL

Dated at _____
City State Date

Failure to Properly Notarize and Return This Form Will Invalidate Your Bid

DOT ASSISTED CONTRACTS BIDDERS LIST

[49 CFR, Part 26]

49 CFR, Part 26 requires that all recipients of Federal Funds collect certain information from all bidders submitting responses to solicitations. To assist in the building of demographics for the area upon which reasonable and effective expectations of DBE/MBE/WBE opportunities may be based, all bidders are required to return this certificate with their offer. Any offer submitted that does not contain a completed copy of this form will be ruled as non-responsive and dropped from further consideration in the procurement process for the solicitation.

Firm Name: _____

Firm Address: _____

Firm Phone: (____) _____ Firm Fax: (____) _____

General Classification of firm by quantity of employees

___ Less Than 10 ___ 11 – 50 ___ 51 – 100 ___ 101 – 500

___ 501 – 1000 ___ 1001 – 5000 ___ More than 5000

General Classification of Firm in Age of Existence

___ 0 – 5 years ___ 6 – 10 years ___ 11 – 50 years ___ Over 50 years

General Classification by Type

___ Firm is a Small Business ___ Firm is a certified DBE

___ Firm is a certified MBE ___ Firm is a certified WBE ___ Firm is not one of the above.

General Classification by Annual Gross Income

___ The approximate annual gross income for this firm is less than \$100,000

___ The approximate annual gross income for this firm is \$100,000 - \$250,000

___ The approximate annual gross income for this firm is \$250,001 - \$500,000

___ The approximate annual gross income for this firm is \$500,001 - \$1M

___ The approximate annual gross income for this firm is \$1M - \$5M

___ The approximate annual gross income for this firm is greater than \$5M

I certify this information is accurate to the best of my knowledge.

_____	_____	_____
Signature	Printed Name	Date

PART IV
BEST PRACTICES PROCUREMENT MANUAL
FEDERAL TRANSIT ADMINISTRATION

TABLE OF CONTENTS (Appendix A - Governing Documents)

A.1 - Federally Required and Other Model Contract Clauses

1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements
6. Energy Conservation Requirements
7. Clean Water Requirements
8. Bus Testing
9. Pre-Award and Post Delivery Audit Requirements
10. Lobbying
11. Access to Records and Reports
12. Federal Changes
13. Bonding Requirements
14. Clean Air
15. Recycled Products
16. Davis-Bacon and Copeland Anti-Kickback Acts
17. Contract Work Hours and Safety Standards Act
18. [Reserved]
19. No Government Obligation to Third Parties
20. Program Fraud and False or Fraudulent Statements and Related Acts
21. Termination
22. Government-wide Debarment and Suspension (Nonprocurement)
23. Privacy Act
24. Civil Rights Requirements
25. Breaches and Dispute Resolution
26. Patent and Rights in Data
27. Transit Employee Protective Agreements
28. Disadvantaged Business Enterprises (DBE)
29. [Reserved]
30. Incorporation of Federal Transit Administration (FTA) Terms
31. Drug and Alcohol Testing

1. FLY AMERICA REQUIREMENTS
49 U.S.C. § 40118
41 CFR Part 301-10

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

(a) Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

(b) Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS
49 U.S.C. 5323(j)
49 CFR Part 661

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

3. CHARTER BUS REQUIREMENTS
49 U.S.C. 5323(d)
49 CFR Part 604

Applicability to Contracts

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

3. SCHOOL BUS REQUIREMENTS
49 U.S.C. 5323(F)
49 CFR Part 605

Applicability to Contracts

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

School Bus Operations - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241

46 CFR Part 381

Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating

outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq. 49

CFR Part 41

Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6. 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.

7. CLEAN WATER REQUIREMENTS
33 U.S.C. 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements:

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8. 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 subrecipients 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: _____

9. 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 subrecipients 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: _____

10. LOBBYING
31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Contractors who apply or bid for an award of \$100,000 or more shall file the

certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

11. 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 subgrantee 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 subgrantee 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 subgrantee 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 subgrantee 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>	None	Those imposed on state pass thru to Contractor	None	None	None	None
a. Contracts below SAT (\$100,000)	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ²	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
b. Contracts above						

\$100,000/Capital Projects			5307/5309/5311			
<u>II Non State Grantees</u>	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
a. Contracts below SAT (\$100,000)	Yes ³		Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects						

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. 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.

13. BONDING REQUIREMENTS

Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall 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 his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to 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.

c. 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. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than \$1 million;

(2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down

Bonding requirements flow down to the first tier contractors.

Model Clauses/Language

FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million;

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

14. CLEAN AIR **42 U.S.C. 7401 et seq** **40 CFR 15.61** **49 CFR Part 18**

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. RECYCLED PRODUCTS **42 U.S.C. 6962** **40 CFR Part 247** **Executive Order 12873**

Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Flow Down

These requirements flow down to all contractor and subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.

Clause Language

1) Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will

notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The [*insert name of grantee*] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [*insert name of grantee*] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [insert *name of grantee*] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been

made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable

wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is

approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Background and Application

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3) (A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

Clause Language

2) Contract Work Hours and Safety Standards

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition,

such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The (*write in the name of the grantee*) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

18. [RESERVED]

19. 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.

20. 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.

21. 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 will the Contractor charge 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 of Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice of 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.

22. 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 **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert agency name}**, 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.

23. 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.

24. 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.

25. 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 therefor 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.

26. PATENT AND RIGHTS IN DATA

**37 CFR Part 401
49 CFR Parts 18 and 19**

Applicability to Contracts

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

Model Clause/Language

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

27. 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 subrecipient 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.

28. 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] [has not]** 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 **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

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.

[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)).

{ If no separate contract goal has been established, use the following } The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

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 **{insert agency name}**. 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 **{insert agency name}**, 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 **{insert agency name}**.

29. [RESERVED]

30. 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.

31. DRUG AND ALCOHOL TESTING
49 U.S.C. §5331
49 CFR Parts 653 and 654

Applicability to Contracts

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Model Clause/Language

Introduction

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

Drug and Alcohol Testing Option 1

The contractor agrees to:

(a) Participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.

Drug and Alcohol Testing Option 2

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Drug and Alcohol Testing Option 3

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and

review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).