



South Central Tennessee
Development District
(SCTDD)

Request for Proposal (RFP)
for
Vintage Trolley Bus

Released for Bid:

February 21, 2016

Must be delivered / fulfilled no later than: October 31, 2018

Responses, Questions, Disputes, or other RFP Interaction may be done in writing (email is acceptable) by contacting:

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Submissions shall be returned by:
March 21, 2018 by 10:00am

This RFP is intended to provide specifications for purchase of initially 1 (one) vehicle, but SCTDD reserves the right to extend this RFP to include up to 10 (ten) such vehicles directly, or through the assignability clause (section 53) for the lifetime of this contract.

DETAILED SPECIFICATIONS
ONE-COMPARTMENT VINTAGE TROLLEY BUS

1. GENERAL

- a. The design of the vehicle shall simulate as near as possible a one-compartment vintage tram with the compartment enclosed. The Contractor shall incorporate in this coach the latest technological advancements in the art of building motor coaches to achieve maximum service life and superior attractiveness of appearance. All materials used in the construction of the coach and in all its parts shall conform to ASTM, S.A.E. or similar association published standards. All materials and workmanship shall be first quality.
- b. The coach must meet all applicable Federal and Tennessee motor vehicle laws in effect at the time the coaches are manufactured. All coaches shall be identical in components and design unless specified otherwise herein.
- c. The body shall be built with suitable and easily accessible compartments provided for all apparatus, sound-deadening insulation wherever needed, and all operating devices so mounted as to reduce and keep all noise and vibrations to an absolute minimum, inside and outside the coach.
- d. The tram-type vehicle furnished under these specifications shall comply with the following general dimensions:

Width	94” min, 102” max.
Interior Width	88” Minimum
Height overall	134” Maximum
Seating Capacity	18 – 20 Passengers
Length	24’ min.- 28’max
Wheelbase	158” min
Floor	Level except for entrance steps
Ground Clearance	9 ¾” Minimum at step and 15” at the axle
Chassis	19,000 GVW minimum

- e. All exposed surfaces and edges inside and outside the coach shall be smooth, free from burrs and other projections, and shall be neatly finished with a minimum of dimple effect in the riveting process.
- f. Service life of vehicle should be seven (7) years or two hundred fifty thousand (250,000) miles.

2. AXLES

- a. Heavy-duty rear axle shall be provided. It shall be compatible with an automatic transmission. Axle gear ratio shall be such as to provide at least sixty-five (65) miles per hour on a zero percent grade, at governed engine RPM.

Front axle capacity	9,000 lbs minimum
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Rear axle capacity	15,000 lbs minimum
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- b. Drain and filler plugs shall be of the magnetic type, with hexagon heads.
- c. Propeller shaft shall be guarded.
- d. The front axle shall be designed with proper wheel and axle geometry so that imperfect front axle operation will be minimized in service. The axle shall be of ample capacity to carry the load imposed on it as set forth in this section. Provisions shall be made for caster adjustment without removing the torque rods, if used.
- e. The combined front and rear axle capacities, as rated by the axle manufacturers, must equal or exceed the total “wet” curb weight of the coach, plus a full seated load, plus standing passenger load of fifty percent (50%) of seated passenger load, plus operator, as one hundred fifty (150) pounds per person.

3. SUSPENSION

Suspension system shall consist of Air ride and be of proper design and suitable capacity, capable of furnishing a comfortable ride. Heavy-duty shock absorbers shall be provided at front and rear. Front leaf spring system will be considered if front air suspension is not available.

4. STEERING

Steering system shall be hydraulic powered with sufficient capacity to provide ease of steering and full maneuverability of vehicle loads.

5. ELECTRICAL SYSTEM

- a. The electrical system shall be 12-volts. All components, appurtenances, wiring, etc., shall be of the same capacity.
- b. The alternator shall be 200 amps. (minimum) with matching voltage regulator, 270amps preferred.
- c. Battery(s) shall be conveniently located and readily accessible for servicing. A 1200-ampere 8D heavy-duty battery shall be provided or dual 1231 pmf/1275CCA batteries.
 1. Trolley bus shall have a battery disconnect switch located in an easily accessible position in the battery compartment.
- d. Heavy-duty 12-volt horns shall be furnished and installed so as to be protected from wheel wash.
- e. Passenger signal shall be pull cord type, located on both sides of the coach. Signal to be located in such a position that it can be conveniently reached by a seated passenger. Cord guides shall be approximately 30 inches apart, and should have a cord stop near guide nearest chime, to prevent cord from pulling loose from chime. The signal itself shall be a single tone chime, located near the driver, with a driver operated shut-off switch.
- f. Main battery starting cables shall be protected from the weather and properly fastened. The main wiring harness shall be loom covered and installed inside the coach body.
- g. All wiring covering shall be flame, abrasion, solvent and petroleum product resistant.
- h. All engine compartment wiring shall have cross-linked polyethylene insulation.
- i. Light fixture wiring shall be high temperature type.
- j. Each bus shall be equipped with a static strap.

6. LIGHTING AND SAFETY EQUIPMENT

- a. Interior lighting shall be by incandescent forty (40) watt (or greater) bulbs, such as to provide adequate light for reading at each seated position and be controlled by the driver by a separate switch.
- b. Step lights shall be installed in the doublewide stepwell, suitably mounted on each side of the stepwell so that the entire stepwell and not less than two feet off the ground area immediately outside of door is well illuminated. Door stepwell lights shall be automatically on only when door is open.

- c. Two remote tail, turn signal, brake light on each rear upper corner of the body. Lights shall be modern LED style.
- d. Each vehicle will come equipped with all lighting required by Federal and State of Tennessee regulations.
- e. One five-pound UL approved fire extinguisher mounted readily accessible to driver.

7. ENGINE

- a. Engine shall be a proper design produced by a reputable and recognized engine manufacturer with readily available source of replacement engine, or parts. Engine shall be of sufficient horsepower and torque over the range of engine speeds to give maximum performance.
- b. Engine shall be a Cummins 6.7 L Turbo Diesel six (6) cylinder or approved equal with a minimum 220 horsepower, and shall have suitable air, fuel, and oil filters. Cummins engine is preferred.
- c. Engine shall comply with all Federal and Tennessee laws and regulations with regard to air and noise pollution that are in effect on the date of manufacture.
- d. The engine and components are to be arranged and mounted so as to provide convenient access for servicing the engine and all of its accessories. Also clearance and accessibility for removal of the accessories and the engine itself.
- e. Engine compartment shall be insulated as much as possible to reduce heat to the driver and noise level. Insulation that is glued or affixed to the inside of the engine cover will have metal strips or a configuration of wire cage that would prevent any chance of the insulation from coming detached and falling onto the engine. The engine cover will have handles on each side for use by mechanics to access the engine area. The noise level generated by the engine, air intake, and other vehicle systems shall not exceed eighty-four (84) dba at any point thirty (30) inches above the floor over any seat at full governed RPM, and with all engine-driven accessories in operation.
- f. An additional Modine automatic hydraulic transmission fluid heat exchanger or approved equal shall be furnished.
 - 1. One remote spin-on transmission filter (Fram HP-1 preferred).
 - 2. All coolers and tanks and cores shall be mounted to prevent damage from vibration.

- g. The radiator system shall be of sufficient size to accommodate stop and go operation, including long periods of idling. Coolant shall be protected to minus thirty (30) degrees Fahrenheit with permanent type antifreeze.
- h. Engine oil cooler remote mounted of size sufficient to cool oil in idle position
- i. Optional engine noise covers to be supplied.
- j. **The engine shall come with the longest available manufacturer's extended warranty.**

8. TRANSMISSION

The automatic transmission shall be an Allison 2200 PTS Automatic or approved equal, compatible with the approved engine. Automatic shifting of gears must be completed smoothly without jerking the bus. Rear axle shall be compatible with the engine and transmission.

The transmission shall come with the manufacturer's longest available extended warranty.

9. HEATERS, DEFROSTER, AND VENTILATION/AIRCONDITIONING

- a. The heating equipment shall be thermostatically and/or manually controlled to provide optimum comfort to the passengers and operator in weather conditions of outside temperature down to ten (10) degrees Fahrenheit.
- b. Driver controlled switches shall control heating and airflow. Heater shall be sufficient to maintain eighty (80) degrees Fahrenheit throughout the bus.
- c. Dual front and rear air conditioning (Carrier system preferred) capable of cooling bus to 65 degrees. Dual compressors sharing no common lines (pressure or return) inside reusable evaporator filters. Readily accessible for ease of service.
- d. Coach shall be equipped with a front and rear heater and defroster and booster pump with a combined output of eighty thousand (80,000) BTU's minimum. Front heater to be equipped with individual duct and control, or heater, to driver's compartment. The defroster shall provide ample air to keep windshields clear at all times of ice on the outside and fogging on the inside. Should have air deflectors to force air upwards.
- e. All hoses carrying coolant for engine and heater shall be silicone type.

10. MIRRORS

- a. Each coach shall be equipped with two (2) 7" X 16" exterior rear view mirrors, one to be on the left front corner post and the other on the right front corner post. They shall be made with a chrome, anodized aluminum, or stainless steel clad back frame and bracket, and be retractable to prevent damage by wash machine brushes. Adjustable mirror arm to be of adequate length to provide rearward vision. Right front mirror shall be mounted to prevent contact with pedestrians or boarding passengers. Each mirror shall have a four (4) inch round convex mirror permanently attached to the frame of the mirror in the lowest inside position.
- b. A 4" X 16" rectangular inside rear view mirror shall be mounted in front and slightly over the driver's head.

11. STANCHIONS

. Brushed stainless steel will be considered.

12. SPLASH APRONS

Splash aprons made of not less than 1/4" rubber, fiber reinforced shall be provided on rear of each wheel housing projecting downward to a point within approximately 4" of ground with coach loaded. Aprons shall have a maximum width compatible with the under structure of the vehicle.

13. FUEL SYSTEM

- a. The UL approved fuel tank shall be a minimum of sixty (60) gallon capacity and be rigidly supported and properly baffled to prevent surging. Fuel tank shall be removable for replacement or repair.
- b. Filler mechanism shall be of approved design, in compliance with applicable safety regulations on driver side.
- c. An appropriate fuel filter shall be provided.

14. EXHAUST SYSTEM

The exhaust pipe shall terminate just ahead of the left hand rear corner of the vehicle exhausting downward to the street and shall be so constructed that it will not cause undue backpressure. Flexible tubing will not be permitted in exhaust system. Adequate size

aluminized steel long life muffler shall be used and system shall meet Federal regulations for exterior noise levels. Flexible tubing will be allowed for vibration dampening only.

15. BRAKES

- a. Brakes shall be Bosch hydraulic pin-slide disc type, front & rear Wabco hydraulic four-channel ABS.
- b. Parking brakes to be rear-wheel or transmission mounted.

16. WHEELS AND TIRES

- a. Contractor to include **Michelin XZE 245/70R19.5 16-ply tires** in vehicle price.
- b. All wheels will be **Alcoa aluminum wheels. (Dura Bright finish with XBR technology if available in selected wheel size)**
- c. All tires and wheels to be interchangeable, front to rear.

17. BODY CONSTRUCTION

- a. Chassis and body frame shall be all steel, adequately reinforced at all joints where stress concentration may occur.
- b. Before assembly all metal parts shall be treated with thorough multiple stage anti-corrosion treatment, and primer paints
- c. All metal nuts, bolts, clips, washers, clamps, rivets and like parts shall be zinc or cadmium plated, or phosphate coated, to prevent corrosion. Where wood and wood are placed together both shall be coated with Tuff-Cote, Neoprene, liquid polyurethane or other appropriate sealing compound.
- d. Body panels shall be minimum 0.063-inch thick aluminum, or minimum 20-gauge steel. Lower skirt panels below rub rail shall be removable separate from body panels for repair or replacement.
- e. All exterior roof and body panels shall be riveted in place: sheet metal screws, welding, or glue shall not be acceptable. Riveting shall be done with care to avoid dimple effect to sheet metal. Rivets shall be treated to accept paint.
- f. All exterior joints and seams shall be protected by the application of caulking of zinc-chromate type, or butyl tape. Body shall be thoroughly water tested to prevent leakage:

corrective caulking shall be applied on dry surfaces to prevent recurrence for the life of the coach.

- g. Exterior body areas such as corner caps and trim may not be of reinforced fiberglass. All light fixtures on exterior shall be fastened with screws to frame members or with rivets to body panels: headlights must be supported by adequate frame support or reinforced body panels.
- h. Vehicles shall be undercoated to prevent corrosion and with fire-retardant material. Do not coat wiring harness because SCTDD of Mt. Pleasant, TN will refuse delivery.
- i. Wheelhouse shall be stainless steel, reinforced fiberglass or other material, with underside protection from rear wheel tire. Wheelhouse surface on inside of coach shall be stainless steel, or shall be painted to match the lower wall area.
- j. Rear wheel housing shall be well ventilated to prevent the heat from affecting the brake system.

18. INSULATION

- a. Inside walls and ceiling shall be insulated with materials providing a R-factor of 0.24 in walls and 0.26 to 0.27 in ceiling, at 75 degrees Fahrenheit.
- b. Engine compartment shall be insulated to prevent transmission of noise, exhaust odor, smoke or heat to the interior of the coach. Specific attention should be paid to insulating the driver's area from engine heat. No interior body surface accessible to a passenger or in the immediate vicinity of the driver shall attain a temperature greater than 80 degrees Fahrenheit generated by the engine. If access to the engine is provided from inside the coach, it shall be properly sealed and soundly constructed to retain its shape and securing method, and shall not require removal of any secured fixtures (grab rails, stanchions, heater assemblies, etc.) inside the coach except seat cover must be removable to facilitate removal of engine assembly.
- c. All insulation shall not deteriorate from heat, water, road shock, or age: must be fire retardant: and must be self-extinguishing within one minute after removal of a propagating flame. Insulation shall not contain polyvinyl chloride or any other substance, which emits poisonous gases or dense smoke when subjected to flame or temperatures over 105 degrees Fahrenheit.

19. INTERIOR TRIM

- a. Interior of coach to be finished in wood, or wood pattern vinyl over metal with trim strips of matching color to cover panel joints or one-piece interior plastic colors to be

approved. If vintage style oak slat seating is to be provided, then vinyl seat cushions for full back and bottom shall be provided

- b. Sidewalls between windows to be paneled with wood, or 1/10" high pressure laminated plastic panels of matching wood color or same as above.
- c. A metal sided storage box will be installed in the right front corner of the trolley interior for storage of items. The top of the box will be of oak wood. The dimensions of the box will be approximately 16" high, 34" long, and 14" wide.

20. ROOF

Framing of roof to be of hat section steel carling and special formed rail around roof perimeter. Lantern type roof will be fabricated with steel basic framing insulated and covered with .040" aluminum.

21. FLOOR AND STEPS

- a. Floor shall be marine plywood minimum 3/4 inch thick, 5-ply resin waterproof bond laminated fir plywood, grade C-C plugged or better, treated to resist decomposition.
- b. Floor shall be level throughout, except wheel housings. Minimum headroom at aisle shall be 78 inches.
- c. Floor covering shall be a ribbed 5/16 inch thick rubber-like material on step threads, in the fare box area and under driver: ribbed 3/16 inch thick rubber-like material in the center aisle of coach. The floor covering under the seats will be 1/8-inch smooth rubber-like floor covering. (**Color of flooring chosen after bid award.**) Yellow Hypalon step nosing shall be provided. All joints in floor covering shall be butt-cut type, and ribs shall be properly aligned to prevent gaps or edges and to facilitate cleaning. Must meet ADA requirements.
- d. Step wells shall be reinforced to prevent deflection. Steps inside the vehicle must be of equal rise, each rise not to exceed 8 inches; step treads depth minimum 12 inches.

22. EXTERIOR PAINT & TRIM

- a. Metal surfaces to be painted will be properly cleaned, etched, and primed as appropriate for the paint used prior to the application of the paint to ensure a proper bond. All exterior paint is to be an approved long lasting "wet look" type paint. Two tone color scheme, exact colors to be specified upon winning bid, and matching styled window etchings.
- b. Paint shall be applied smoothly and evenly with the finished surface free of dirt, runs, orange peel, and other imperfections.

- c. All exterior surfaces will be impervious to diesel fuel, gasoline, and other commercial cleaning agents.
- d. All concealed metal surfaces shall be given a coat of corrosion resistant protective paint. All non-anodized metal prior to painting must be thoroughly cleaned and treated to prevent rusting or corrosion before the primer coat is applied. Concealed non-anodized parts not normally painted must be treated to make them corrosion resistant.

23. DOORS

- a. A front singlewide entrance/exit doorway shall be provided on the right side of the vehicle, immediately behind the right front wheel and shall be **electrically operated** with both sets of door panels actuated together by a single door operator. The door shall fold inwardly or outwardly, providing a minimum of 21” clear opening without protruding beyond the exterior of the coach body. Edges on front and rear sections of door must be extruded rubber, overlapping to provide a sealed doorway. (Door should be key operated from outside.)
- b. The door shall be able to open even when the vehicle is tilted toward the curb.
- c. An emergency door in the rear of the vehicle or an escape hatch in roof of coach shall be provided if windows are not equipped with a safety release latch and a push out capability to provide an emergency exit in conformance with FMVSS #217. Interior dimensions of 27.5 inches by 23.5 inches. The type of hatch shall be Trans Spec Model 1122 or approved equal.
- d. A separate door lift shall be provided for handicapped accessibility. (A Braun Millennium series platform lift with an 800 pound lift capacity or an approved equal will be installed) The lift must fully comply in accordance with provisions of the Americans with Disabilities Act.
- e. Q’S TRAIT self-tensioning and self-locking securement systems for the wheelchair lifts will be provided for each wheel chair position. All personal mobility aid devices must fully comply with all ADA regulations.
- f. The securement system shall be the four-point tie down system. The tie downs must not interfere with the placement of seats. The placement of the tie downs shall be behind the driver seat or at the rear of the coach and it must be facing forward. Each wheelchair tie down location shall be equipped with seat belts and shoulder harnesses, which are anchored to the floor that meet or exceed state and federal regulations.
- g. The contractor shall provide two sets of the tie downs including safety and shoulder belts per vehicle. The belts shall be neatly stored in hanger brackets when not in use.

The hanger bracket shall be made of durable material and shall not be a hazard to passengers.

24. PASSENGER SEATS AND DRIVER'S SEAT

- a. All passenger seats shall be hardwood with cast aluminum ends. Backs and seats shall be "slat type" stained and properly coated to prevent splintering or rotting and shall be peripheral seating.
- b. **Bidder shall submit proposed seating layout with the bid.** Vehicle to simulate fully enclosed vintage tram with no rear exit, so rearmost seat shall provide seating accommodations for five passengers.
- c. Driver's seat shall be a top of the line "**RECARO**" seat designed for the transit industry which is adjustable up and down, fore and aft, and with back tilt with adjustments, and equipped with seat belt. Seat cover color will be black.

25. WINDOWS

- a. Windows shall comply with all applicable FMVSS.
- b. Side and rear windows and door windows shall be laminated safety; single-density tinted, and shall open. The side and rear window glass will have a tint which will effectively block twenty-eight (28%) to thirty-one (31%) percent of incoming light. The side windows in the driver's compartment shall be horizontal slide type, capable of being fully opened. Each of the side windows will be operable. The window design shall be patterned after the streetcars manufactured during the period of 1890 to 1905. The window latches must be a heavy duty design and capable of securing the windows in the open or closed position regardless of road vibration. The side windows will be trimmed with oak strips, or an approved equal material in the interior. The window frames will be **heavy duty** and in approved dark anodized aluminum. No bare glass edges will be accepted within the design of the side passenger windows. Because of past experience, "Hehr" brand windows will not be accepted. The construction and design of the side windows will be subject to SCTDD's review and approval prior to submission of the bid proposal.
- c. The windshield shall consist of three separate windshield sections and shall be glazed with laminated, safety, single-density tinted glass. Padded left hand sun visor adjustable for windshield or driver's window to be furnished, covering to match interior color.
- d. All non-metal window glazing material shall be black. Metal dash to be painted tan to have the "wood look".

26. WINDSHIELD WIPERS AND WASHERS

- a. Windshield wipers (3) shall be electrically or air powered two speed mounted from bottom of windshields.
- b. Windshield washers shall have a minimum two (2) quart capacity.

27. DRIVER'S BARRIER

- a. A partition will be provided directly in back of the driver to provide security to the driver and to limit the amount of passenger conversation. This partition shall extend vertically from the floor to the ceiling and from the wall to the vertical stanchion located to the right rear of the driver's seat. This partition shall be constructed of an approved wood grain Melamine panel and laminated smoke safety glass.

28. SIGN PANELS

(This section reserved).

29. BUMPERS

Front and rear will be one piece ¼" steel fabricated assemblies. The front bumper will be at least five, but no more than ten (10) inches in height. The rear bumper will be at least seven, (7) but not more than eleven (11) inches in height. Both the front and rear bumper will extend from the body of the vehicle by at least one (1) inch, but not more than two (2) inches. The bumpers will match the curvature of the front and rear panels. The bumpers will also be finished in flat black polyurethane. **An authentic, vintage design cowcatcher front bumper is preferred.**

30. INSTRUMENT PANEL

- a. The instrument panel shall include all necessary instruments for safe operation of the coach, including, but not limited to air pressure gauge if compressed air is used, fuel gauge, low air pressure gauge and warning buzzer, speedometer indicating miles per hour and 7-digit odometer, high beam indicator, emergency brake light, low brake fluid indicator, oil pressure warning light and gauge, water temperature light gauge, door open warning lights, and voltmeter. Switch for control of lights, door controls, heat, fans, and engine control shall be conveniently located to the driver's position. Switches shall be protected in an approved manner against accidental operation.

- b. Instrument panel shall be constructed so as to provide easy access to all instruments or switches and fuses.

31. FARE BOX

- a. A vintage style drop and lock coin or token fare box shall be installed. The farebox will be a Diamond Model SV with two (2) vaults. Five (5) additional farebox “flapper springs” will be supplied with the farebox. Key codes for the Fareboxes are to be the same as other current City owned Diamond fareboxes. SCTDD can supply necessary keying information to Diamond, Mfg. if necessary or should questions arise.
- b. This fare box shall be located where it is readily accessible to both the passengers and driver. The exact placement of the farebox will be determined after the bid award.

32. AUDIO/PUBLIC ADDRESS SYSTEM

- a. A Midwest 470A or approved equal public address shall be installed in the vehicle. The amplifier shall be mounted overhead in the driver’s compartment in a location, which shall allow the driver to control both the volume and squelch.
- b. A minimum of four (4) interior speakers shall be provided throughout the vehicle and one curbside exterior speaker to allow the driver to communicate with the visually impaired. A switch shall be provided on driver’s console to provide the driver with the option of using either the exterior or interior speakers, or both.
- c. A heavy-duty gooseneck boom-type microphone shall be provided for the driver. A heavy-duty clip must be provided to secure the gooseneck microphone.
- d. A handheld microphone with a minimum of six (6) feet of wire shall be provided in the driver’s compartment. A jack shall be provided on the right side of the driver’s console to provide a connection for the handheld microphone.
- e. The microphone shall be a high quality, hand-held dynamic type with a minimum of ten (10) feet of coiled cord and a four (4) pin locking connector. The amplifier shall have a power output of twenty (20) watts at less than ten (10%) percent harmonic distortion. A microphone level of 65dBm shall provide an output of eighteen (18) watts.
- f. The four (4) loudspeakers shall be capable of handling eight (8) watts of power each and shall have magnetic weights of at least four (4) ounces. The speaker depth shall not exceed one and 13/16 inches and shall be factory assembled to a matching baffle made from Type 304 stainless steel. The baffle diameter shall not exceed eight (8) inches and shall not project more than 11/16 inches from the mounting surface.
- g. An AM/FM radio with CD player shall be overhead mounted within easy reach of seated driver. This system may share speakers with the public address system.

33. SECURITY CAMERA SYSTEM

- a. The vehicle should be equipped with a minimum of four security cameras, connected to a Fortress security camera DVR system.
- b. The cameras will come pre-wired, with conduits installed in which the wiring is run.
- c. The cameras will be mounted as such to provide a combined full coverage of the interior of the vehicle, all entrances, and the driver’s compartment.

34. HANDRAILS

All hand rails to be brushed stainless steel inside trolley

34. UNDERCOATING

- a. The underneath portion of the undercarriage and stepwell, including the underside of the wheelhousings shall be sprayed with an approved fire resistant undercoating material.
- b. All electrical components, air lines, brake system components, lube fittings and drain valves will be protected from undercoating overspray.
- c. The bidder shall be required to provide a full five (5) year or two hundred thousand (200,000) miles; whichever comes first, rust through protection warranty.

35. DECALS AND MONOGRAMS

The bidder shall supply and affix to the interior and exterior those decals regarding safety and operating procedures. Said decals shall include, but not be limited to, the following:

	<u>Decal</u>	<u>Number</u>	<u>Location</u>
a.	No Smoking	1	Interior above driver rear bulkhead
b.	Watch Your Step	1	Front Stepwells

- c. Fire Extinguisher 1 Front safety
Compartment
- d. Passengers to stay 1 behind white line while
trolley is moving overhead front

36. SAFETY EQUIPMENT

- a. The bidder shall provide and install a rechargeable ten (10) pound dry chemical **fire extinguisher** with an ABC rating. A metal label shall be attached to the fire extinguisher indicating it has been listed and approved by Underwriters Laboratories and Factory Mutual Laboratories. The fire extinguisher shall be mounted in a location approved by SCTDD.
- b. The bidder shall provide three (3) **folding reflective triangles** in accordance with Federal DOT Standard No. 125 in each vehicle. The triangles shall be stored in a fiberglass or aluminum container. The location of the container housing the triangles shall be subject to SCTDD’s review and approval prior to submission of bid proposal.
- c. The bidder shall provide one (1) **triangular wheel chock** mounted in a bracket in an approved location.

37. PARTS BOOKS, MANUALS, DRAWING AND TRAINING

- a. Parts Books:

The bidder will furnish SCTDD with one complete set of draft parts books at least forty (40) days prior to the scheduled delivery of the vehicle for SCTDD’s review and approval.

With the delivery of the vehicle the bidder will provide SCTDD with two (2) complete parts books as approved by SCTDD with each vehicle delivered

The bidder will provide SCTDD two (2) copies of the price list in United States dollars. The bidder will be required to provide up-to-date supplements to the parts book's price list for at least ten (10) years.

The bidder will carry an adequate supply of spare parts for twelve (12) years in the continental United States and will clearly list in the parts books supplied, the United States base for said spare parts.

All parts publications must be in the English language with clear diagrams detailing each subsystem found on the vehicle.

Each parts book will have a complete alpha and numeric listing for ease of use.

b. Maintenance Manuals:

The bidder will furnish SCTDD with a complete draft maintenance manual at least forty (40) days prior to the scheduled delivery of the first vehicle for SCTDD's review and approval.

With the delivery of the vehicle, the bidder will furnish SCTDD with four (4) complete maintenance manuals, as approved by SCTDD, for each vehicle delivered covering, but not limited to the following systems:

1. Trouble shooting guide.
2. Lubrications and adjustments required.
3. Replacement and repair procedures.
4. Preventive maintenance cycles and practice.
5. Wiring diagrams for the vehicle as manufactured.

The maintenance manuals must be in English.

c. Driver's Manuals

The bidder will furnish SCTDD with five (5) driver's manuals.

The driver's manuals will explain the operation and location of various gauges and switches found in the driver's compartment.

The driver's manual will also instruct the driver what corrective action should be taken in the event of failure or malfunction of various subsystems found on the vehicle.

The driver's manuals will be furnished to SCTDD concurrent with the delivery of the vehicle.

The driver's manual must be in English.

d. Driver's Training

The bidder will provide with the delivery of the first vehicle a training session in SCTDD for the designated vehicle drivers on how to safely drive the vehicle and explain all the subsystems found on the vehicle.

The training session for the drivers will be a minimum of four (4) hours.

e. Maintenance Training

The bidder will furnish with the delivery of the vehicle an on-site maintenance instructor to provide instruction on the vehicle and its related subsystems and how to file warranty claims.

The instructor will be required to provide a minimum of eight (8) hours of on site instruction.

The bidder will provide classroom instruction on the engine, transmission, and air conditioning systems. This training may be provided by the manufacturer of the engine, transmission, and air conditioning systems. The training may be at a regional service center. SCTDD is willing, at its expense, to send two (2) or three (3) mechanics to these training sessions.

f. Tool List

The bidder will furnish SCTDD, thirty (30) days prior to delivery of the vehicle, a list of recommended tools for maintaining the vehicle and its subsystems. Said list will be in order of priority and clearly state the manufacturer, part number and price of each tool.

g. Spare Parts List

Bidder will furnish SCTDD within one hundred (100) days after contract award, a list of recommended spare parts. This list shall clearly describe each part, quantity recommended, and the unit cost.

38. WATER TEST

A water test will be conducted over the entire surface of the trolley bus. The trolley at the time of the test shall be complete with no windows, doors, or other key components missing.

The nozzles that deliver the water will eject a minimum total volume of fifty (50) gallons per minute at a pressure of fifteen (15) pounds per square inch measured at each nozzle tip.

The water test shall be conducted for a minimum of ten (10) minutes.

If water leaks are evident during the water test, they shall be repaired and the vehicle shall undergo another test to ensure the leaks have been completely corrected.

39. WHEELCHAIR ACCESSIBLE DOOR, WHEELCHAIR LIFT AND WHEELCHAIR RESTRAINTS

a. Wheelchair Accessible Door

Wheelchair accessible door will be installed on the rear curbside of the trolley.

Doorway shall comply with all ADA requirements.

A full ADA approved interlock system will be provided on trolley.

b. Wheelchair Lift

Wheelchair lift shall fully comply with all ADA requirements.

The wheelchair lift shall be a commercial bus platform lift that has a rated load capacity of at least 800 pounds. **A Braun lift is preferred.** The platform lift shall be installed at the passenger side rear of the trolley

The switch box for lift operation shall be of a one-hand operation design made of durable ABS plastic. Color-coded rocker switches shall be required and be permanently stamped with the appropriate function legends. Control cable shall be of commercial quick connect type as standard, for ease of maintenance or field change.

The wheelchair lift shall be hydraulically operated and a manual back-up system shall be provided to ensure operation of the lift in case of electrical failure. The back-up system shall provide a reliable means of manually raising and lowering the lift while occupied. The back-up system shall fold and unfold the platform. The back-up pump shall be integrated with the hydraulic power pack system such that no hydraulic lines or fittings are required for fluid transfer.

The platform shall be of steel construction and shall be covered with a non-slip surface. The platform shall have a minimum usable wheelchair passageway width of thirty (30) inches and a minimum usable length of forty-eight (48) inches. The sides of the platform shall be a minimum to four (4) 1/4 inch high.

The platform shall be automatically folded and unfolded and fully automatic in operation. The platform shall allow both inboard and outboard facing of wheelchair and mobility aid users.

Dual handrails shall be provided to add security and convenience.

The lift shall operate in temperature ranges from -10 degrees to +115 degrees F.

Pinching movements, shear area, or places where clothing or other objects could be caught or damaged will be covered or otherwise protected to prevent passenger injury.

Interlocks shall be provided to prevent vehicle movement when the lift is in a position other than a stowed position.

Interlocks shall be provided to prevent lift activation and operation unless the vehicle is stopped and inhibited from movement and the appropriate door is opened.

c. Wheelchair Restraints

“Q’STRAINT” self-retractable wheelchair tie-downs & occupant restraint systems will be provided for each wheelchair seating position to restrain the wheelchair and its occupant safely during the ride. When not in use, all tie-down belts will retract and

stow as to give a neat appearance and not be a tripping or catching hazard to any passenger.

The belts must not interfere with the folding of seats. The mounting and arrangements of the belts and wheelchair restraining devices will be subject to SCTDD’s review and approval prior to submission of bid proposal.

Wheel rim locks mounted on the bottom of the flip seat will also be provided in addition to the belts. The wheel locks provided must be capable of securely holding all standard wheelchairs, which can be accommodated by the lift.

Two wheelchair securement stations will be provided at the rear of the trolley bus.

40. VEHICLE EMISSION REQUIREMENTS

The bidder will certify in writing on delivery of the vehicle to SCTDD under contract, that it meets the U.S. Environmental Protection Agency emission standards as of date of manufacture.

41. MOTOR VEHICLE SAFETY REQUIREMENTS

Vehicles will comply with the federal motor vehicle safety standards as established by the U.S. Department of Transportation in effect on the date of manufacture.

Vehicles will comply with all requirements of the laws of the State of Tennessee.

If the requirements of this section change between the date of the contract and the date of manufacture or delivery, any additional cost reduction resulting from such changes will be negotiated to the mutual satisfaction of SCTDD and the contractor.

42. **VEHICLE INFORMATION QUESTIONNAIRE**

The following questionnaire is required to be completed and returned with the bidder’s response to the technical specifications. SCTDD will not respond to any bidder’s response(s) or request for approval or exception unless this questionnaire is completed and returned.

A. **MANUFACTURER**

1. Name _____

2. Address _____

3. Project Manager _____

4. Telephone Number _____

B. **VEHICLE MODEL NUMBER**

C. **MAXIMUM WARRANTED SPEEDS**

- 1. Main Drive Engine
 - Full Load _____ RPM
 - No Load _____ RPM
- 2. Generator _____ RPM
- 3. Propulsion Engine Fan _____ RPM
- 4. Power Steering Pump _____ RPM
- 5. Transmission _____ RPM
- 6. A/C Compressor _____ RPM
- 7. Vehicle Speed _____ RPM

D. **GENERAL DIMENSIONS**

- 1. Overall Length
 - Over Bumpers _____ IN.
 - Over Body _____ IN.
- 2. Overall Width _____ IN.
- 3. Overall Height, Front
 - Empty _____ IN.
 - With Gross Load _____ IN.
- 4. Overall Height, Rear
 - Empty _____ IN.
 - With Gross Load _____ IN.
- 5. Wheelbase _____ IN.
- 6. Overhang, Center of Axle
 - Over Bumper
 - Front _____ IN.
 - Rear _____ IN.
- 7. Height, Floor to Ceiling
 - Above Front Axle _____ IN.
 - Above Rear Axle _____ IN.
- 8. Width of Aisle
 - At Seat back _____ IN.
- 9. Floor height – height of aisle
 - Floor with the air suspension
 - Operating on properly
 - Inflated tires _____ IN.
 - Front Axle _____ IN.
 - Rear Axle _____ IN.
- 10. Step Height – front door, ground
 - To first step _____ IN.
- 11. Step Riser - Front
 - Height – First Step Depth _____ IN.
 - Height – Second Step Depth _____ IN.
- 12. Height of Door Opening Over

First step _____ IN

- 13. Minimum Road Clearances
 - Front Axle _____ IN.
 - Rear Axle _____ IN.
 - Location of Low Point
And Clearance _____ IN.

- 14. Gradeability Angles
 - Approach Angle _____ DEGS.
 - Departure Angle _____ DEGS.
 - Ramp Break over Angle _____ DEGS.

- 15. Tire Size
 - Front _____
 - Rear _____

E. WEIGHT

- 1. Curb Weight _____ LBS
- 2. Gross Vehicle Weight _____ LBS
- 3. Main Drive Engine with
Accessories and transmission
Ready for installation _____ LBS

F. MAIN DRIVE ENGINE

- 1. Engine Manufacturer _____
- 2. Engine Model Number _____
- 3. Number of Cylinders _____
- 4. Bore _____
- 5. Stroke _____
- 6. Displacement _____
- 7. Compression Ratio _____

8. Local Service Representative _____

9. Brake Horsepower _____ HP
At RPM

10. Crankcase Oil Capacity _____ QTS
New Engine Dry _____ QTS
New Engine Wet _____ QTS

11. Oil Filter Capacity _____
Full Flow _____
Bypass _____
Manufacturer of _____
Bypass Filter _____

12. Idle Speed _____ RPM

13. Fast Idle Speed _____ RPM

G. TRANSMISSION

1. Manufacturer _____

2. Transmission Model Number _____

3. Local Service Representative _____

4. Ratio _____
1st _____
2nd _____
3rd _____
4th _____

5. Fluid Capacity _____

H, AXLE, FRONT

1. Manufacturer _____

2. Model Number _____

3. Load rating _____ LBS

I. AXLE, REAR

- 1. Manufacturer _____
- 2. Model Number _____
- 3. Load rating _____ LBS
- 4. Ratio _____

J. POWER STEERING

- 1. Pump
Manufacturer and Model
Number _____
Type _____
Relief Pressure _____ PSI
- 2. Steering Box _____
Manufacturer and Model
Name _____

K. BRAKES

- 1. Manufacturer of
Fundamental System _____
- 2. Brake Chambers _____
Vendor and Size _____
Front _____
Rear _____
- 3. Slack Adjuster
Vendor and Model Number _____

Front _____

Rear _____

4. Front Brakes _____

Drum "Size _____

Lining Size _____

Lining Type _____

5. Rear Brakes _____

Drum Size _____

Lining Size _____

Lining Type _____

L. COOLING SYSTEM

1. Radiator Manufacturer _____

2. Radiator Model Number _____

3. Frontal Area _____ SQ IN.

4. Number of Radiator Cores _____

5. Capacity of Cooling System _____ GALS

M. HEATING SYSTEM

1. Main Heater Core _____

Manufacturer _____

Model Number _____

Number of Rows _____

Number of Fins Per Inch _____

Fin Thickness _____

Rated BTU's _____

2. Front Defroster _____

Manufacturer _____

Model Number _____

Number of Rows _____

Manufacturer of Motor _____

Size of Motor _____

Rated BTU's _____

3. Circulating Pump _____

Manufacturer _____

Model Number _____

Displacement _____

N. AIR SYSTEM

1. Air Compressor _____

Manufacturer _____

Model Number _____

Capacity _____

2. Air Governor _____

Manufacturer _____

Model Number _____

3. Air Dryer _____

Manufacturer _____

Model Number _____

O. ELECTRICAL SYSTEM

1. Generator _____

Manufacturer _____

Model Number _____

Rating _____

2. Batteries _____

Manufacturer _____

Model Number _____

Number of Batteries _____

Rating at Maximum
Engine RM _____

Rating at Idle _____

3. Regulator _____

Manufacturer _____

Model Number _____

Displacement _____

P. TIRES

Manufacturer _____

Size _____

Load Range _____

Model _____

Q. AIR CONDITIONING SYSTEM

1. Compressor(s) _____

Manufacturer _____

Model Number _____

Model Number _____

Number of Cylinders _____

Cubic Displacement _____

Drive Ratio (to engine) _____

2. Condenser(s) _____

Manufacturer _____

Model Number _____

Number of Rows _____

Number of Fins per Inch _____

Fin Thickness _____

3. Condenser Fan _____

Manufacturer _____

Model Number _____

Fan Diameter _____

Speed _____

Flow Rate _____

4. Evaporator _____

Manufacturer _____

Model Number _____

Number of Rows _____

Type of Evaporator Filters _____

Number of Fins per Inch _____

5. Evaporator Valve _____

Manufacturer and Model
Number _____

Superheat Setting _____

6. Drier _____

Manufacturer and Model
Number _____

43. WARRANTY AND REPAIR

WARRANTY REQUIREMENTS

Warranties in this document are in addition to any statutory implied warranties, remedies or warranties imposed on the contractor. Consistent with this requirement, the contractor warrants and guaranties to SCTDD the Complete vehicle, and specific subsystems and components as follows:

a. Complete Vehicle

The vehicle warranted and guaranteed to be free from defects for one (1) year or fifty thousand (50,000) miles whichever comes first. Beginning on the date of acceptance of the vehicle. During this warranty period, the vehicle will maintain its structural and functional integrity. The warranty is based on regular operation of the vehicle under the operating conditions prevailing SCTDD, Mt. Pleasant, Tennessee.

b. Subsystems and Components

Specific subsystems and components are warranted and guaranteed to be free from defects and related defects for the times and/or mileages given in the table below.

SUBSYSTEM AND COMPONENT WARRANTY
WHICHEVER COMES FIRST

<u>Item</u>	<u>Years</u>	<u>Mileage</u>
Engine (basic warranty plus longest available ext. warranty)		
Transmission (basic warranty plus longest available ext. warranty)		
Drive Axle	2	100,000
Brake system (excluding Friction material)	2	50,000
Air conditioning system	2	N/A
Basic body structure	5	200,000
Structural Integrity Corrosion	7	350,000

c. Voiding of Warranty

The warranty will not apply to any part or component of the vehicle that has been subject to misuse, negligence, accident, or that has been repaired or altered in any way to adversely affect its performance or reliability, except insofar as such repairs were in accordance with the contractor’s maintenance manuals and the workmanship was in accordance with the recognized standards of the industry. The warranty will also be

voided if SCTDD fails to conduct normal inspections and scheduled preventive maintenance procedures as recommended in the contractor's maintenance manuals.

d. Exceptions to Warranty

The warranty will not apply to scheduled maintenance items nor to items furnished by the procuring agency such as radios, fare boxes, and other auxiliary equipment, except insofar as such equipment may be damaged by the failure of a part or component for which the contractor is responsible.

e. Detection of Defects

If SCTDD detects a defect with the warranty periods defined in Section 17.1.1 it will promptly notify the contractor's representative. Within five (5) working days after receipt of notification, the contractor's representative will either agree that the defect is in fact covered by warranty, or reserve judgment until the subsystem or component is inspected by the contractor's representative or is removed and examined at the procuring agency's property. At that time, the status of warranty coverage on the subsystem or component will be mutually resolved between the procuring agency and the contractor. Work necessary to affect the repairs defined in Section 18.2 will commence within ten (10) working days after receipt of notification by the contractor.

f. Scope of Warranty Repairs

When warranty repairs are required, SCTDD and the contractor's representative will agree within five (5) days after notification on the most appropriate course for the repairs and the exact scope of the repairs to be performed under the warranty. If no agreement is obtained within the five (5) day period, the procuring agency reserves the right to commence the repairs in accordance with Section 18.2.

44. REPAIR PROCEDURES

a. Repair Performance

As its option SCTDD or its designated representative may require the contractor or its designated representative to perform warranty-covered repairs that are clearly beyond the scope of SCTDD's capabilities. The work may be done by the procuring agency's personnel with reimbursement by the contractor.

b. Repair by Contractor

If SCTDD requires the contractor to perform warranty-covered repairs, the contractor's representative must begin, within ten (10) working days after receiving notification of a defect from the procuring agency, work necessary to make repairs. The procuring agency

will make the vehicle available for complete repairs in time with the contractor’s repair schedule.

The contractor will provide at its own expense, all spare parts, tools and space required to complete repairs. At SCTDD’s option the contractor may be required to complete repairs. At the procuring agency’s option, the contractor may be required to remove the vehicle from the procuring agency’s property while repairs are being conducted. If the vehicle is removed from the procuring agency’s property, repair procedures must be diligently pursued by the contractor’s representative.

c. Repairs by Procuring Agency

Parts Used

If SCTDD performs the warranty-covered repairs, it will correct or repair the defect and any related defects using contractor specified spare parts available from its own stock or those supplied by the contractor specifically for this repair. Monthly, or at a period to be mutually agreed upon, report of all repairs covered by this warranty will be submitted by the procuring agency to the contractor for reimbursement or replacement of parts. The contractor will provide forms for these reports.

SCTDD may request that the contractor supply new parts for warranty covered repairs being performed by the procuring agency. These parts will be shipped prepaid to the procuring agency from any source selected by the contractor within ten (10) working days of receipt of the request for parts.

d. Defective Components Return

The contractor may request that parts covered by the warranty be returned to the manufacturing plant. The total cost for this action will be paid by the contractor. Materials should be returned in accordance with contractor’s instructions.

e. Reimbursement for Labor

The procuring agency will be reimbursed by the contractor for labor. The amount will be determined by multiplying the number of labor hours actually required to correct the defect by the current per hour, straight wage rate, plus forty-three percent (43%) fringe benefits, plus the cost of towing in the vehicle if such action was necessary and if the vehicle was in the normal service area. These wage and fringe benefit rates will not exceed the rates in effect in the procuring agency’s service garage at the time the defect correction is made.

f. Reimbursement for Parts

The procuring agency will be reimbursed by the contractor for defective parts and for parts that must be replaced to correct the defect. The reimbursement will be at the invoice cost of the part(s) at the time of repair and will include taxes where applicable and ten percent (10%) handling costs.

45. **WARRANTY AFTER REPLACEMENT/REPAIRS**

If any component, unit, or subsystem is rebuilt or replaced by the contractor or by the procuring agency’s personnel, with the concurrence of the contractor, the subsystem will have the unexpired warranty period of the original subsystem.

46. **WARRANTY OF BASIC VEHICLE STRUCTURE**

The contractor or specified subcontractor will warranty the frame and suspension members for five (5) years or two hundred thousand (200,000) miles, whichever comes first. This warranty will not cover air bags leveling valves, springs or other normal wearing parts. The contractor is not liable for warranty if SCTDD voids the warranty as outlined in Section 17.2. If the frame or suspension fails or shows indication of imminent failure SCTDD will immediately notify the contractor of the defect. Within twenty (20) calendar days the contractor will inform SCTDD on how the contractor will repair the vehicle. Repair of frame and suspension failures will be the responsibility of the contractor. Within thirty (30) calendar days the contractor will begin the repair of the frame and suspension defects. If the vehicle is out of service for forty-five (45) or more calendar days because of the reported defect, the contractor will have to provide a substitute vehicle with equal or greater seating capacity. SCTDD will also assess fifty dollars (\$50.00) per day as liquidated damages against the contractor, beginning on the fortieth (40th) day and continuing until the defect is repaired.

47. **ACCEPTANCE TESTS**

a. **Responsibility**

Fully documented tests will be conducted on the production vehicle following manufacture to determine its acceptance to the procuring agency. These acceptance tests will include pre-delivery inspections and testing by the contractor, and inspections and testing by the procuring agency after the vehicle has been delivered.

b. **Pre-delivery Tests**

The contractor will conduct acceptance tests at its plant on the vehicle following completion of manufacture and before delivery to the procuring agency. These pre-delivery tests will include visual and measured inspections, as well as testing the total

operation. The test will be conducted and documented in accordance with written test plans. Additional tests may be conducted at the contractor's discretion to ensure that the completed vehicle has attained the desired quality and has met the requirements in the technical specifications. This additional testing will be recorded on appropriate test forms provided by the contractor.

The pre-delivery tests will be scheduled and conducted with sufficient notice so that they may be witnessed by the resident inspectors, who may accept or reject the results of the tests. The results of pre-delivery tests, and any other tests, will be filed with the assembly inspection records for the vehicle. The underflow, or elevated platform will be provided by the contractor. A hoist, scaffold, or elevated platform will be provided by the contractor to easily and safely inspect the vehicle roof. Delivery of the vehicle will require written authorization of a resident inspector. Authorization forms for the release of the vehicle for delivery will be provided by the contractor. An executed copy of the authorization will accompany the delivery of the vehicle.

c. Inspection-Visual and Measured

Visual and measured inspections will be conducted with the vehicle in a static condition. The purpose of the inspection testing is to verify overall dimensional and weight requirements, to verify that required components are included and are ready for operation and to verify that components and subsystems are designed to operate with the vehicle in a static condition to function as designed.

d. Total Vehicle Operation

Total vehicle operation will be evaluated during road test. The purpose of the road test is to observe and verify the operation of a complete vehicle as a system and to verify the functional operation of the subsystem that can be operated only while the vehicle is in motion.

The vehicle will be driven for a minimum of fifteen (15) miles during the road tests. After the road test, SCTDD reserves the right to require the contractor to raise the vehicle or drive it over a pit to allow SCTDD's inspector to inspect the undercarriage. Observed defects will be recorded on the test forms. The vehicle will be retested when defects are corrected and adjustments are made. This process will continue until defects or required adjustments are no longer detected. Results will be pass/fail for these vehicle operation tests.

e. Post-Delivery Tests

SCTDD may conduct acceptance tests on the delivered vehicle. These tests will be completed within fifteen (15) days after vehicle delivery and will be conducted in accordance with written test plans. The purpose of these tests is to identify defects that have become apparent between the time of vehicle release and delivery to the procuring agency. The post-delivery tests will include visual inspection and vehicle operations.

A vehicle that fails to pass the post-delivery tests is subject to non-acceptance. The procuring agency will record details of all defects on the appropriate test forms and will notify the contractor of non-acceptance of the vehicle within five (5) days after completion of the tests. The defects detected during these tests will be repaired according to procedures defined in solicitation, offer and award/contractual provisions.

f. Visual Inspection

The post-delivery inspection is similar to the inspection at the contractor’s plant and will be conducted with the vehicle in a static condition. Any visible delivery damage will be identified and recorded during the visual inspection of the vehicle.

g. Vehicle Operation

The road tests for total vehicle operation are similar to those conducted at the contractor’s plant. Operational deficiencies of the vehicle will be identified and recorded.

h. Acceptance

Within fifteen (15) calendar days after arrival at the designated point of delivery to SCTDD, the vehicle shall undergo SCTDD’s post-delivery inspection and tests. If the vehicle passes this inspection and tests, acceptance of the vehicle by SCTDD occurs on the fifteenth (15th) day after delivery. Acceptance may occur earlier if SCTDD notifies the contractor of early acceptance or places the vehicle in revenue service. If the vehicle fails the inspection test, SCTDD reserves the right to either have the contractor make the required repairs or make the repairs itself. If SCTDD makes the repairs they will be handled in accordance with the Warranty Provisions.

48. CONTRACTOR’S IN-PLANT QUALITY ASSURANCE REQUIREMENTS

a. Quality Assurance Organization

The contractor will establish and maintain an effective in-plant quality assurance organization. It will be a specifically defined organization and should be directly responsible to the contractor’s top management.

i. Control

The quality assurance organization will exercise quality control over all phases of production from initiation of design through manufacture and preparation for delivery. The organization will also control the quality of supplies articles.

ii. Authority and Responsibility

The quality assurance organization will have the authority and responsibility for reliability, quality control, inspection planning, establishment of the quality control system, and acceptance/rejection of materials and manufactured articles in the production of the vehicles.

b. Quality Assurance Functions

The quality assurance organization will include the following minimum functions:

iii. Work Instructions

The quality assurance organization will verify inspection operation instructions to ascertain that the manufactured product meets all prescribed requirements

iv. Records Maintenance

The quality assurance organization will maintain and use records and data essential to the effective operation of its program. These records and data will be available for review by the resident inspectors. Inspection and test records for this procurement will be available for a minimum of one (1) year after inspections and tests are completed.

v. Corrective Actions

The quality assurance organization will detect and promptly assure correction of any conditions that may result in the production of defective vehicles. These conditions may occur in design, purchase, manufacture, tests, or operations that culminate in defective supplies, services, facilities, technical data or standards.

c. Standards and Facilities

The following standards and facilities will be basic in the quality assurance process.

MANUFACTURING CONTROL

The contractor will ensure that all basic production operations, as well as all other processing and fabricating are performed under controlled conditions. Establishment of these controlled conditions will be based on the documented work instruction, adequate production equipment, and special working environments if necessary.

vi. Completed Items

A system for final inspection and test of completed vehicles will be provided by the quality assurance organization. It will measure the overall quality of each completed vehicle.

vii. Nonconforming Materials

The quality assurance organization will monitor the contractor’s system for controlling nonconforming materials. The system will include procedures for identification, segregation, and disposition.

viii. Statistical Techniques

Statistical analysis tests, and other quality control procedures may be used when appropriate in the quality assurance process.

ix. Inspection Status

A system will be maintained by the quality assurance organization for identifying the inspection status of components and completed vehicles. Identification may include cards, tags, or other normal quality control devices.

49. INSPECTION SYSTEM

The quality assurance organization will establish, maintain and periodically audit a fully documented inspection system. The system will prescribe inspection and test of materials, work in progress, and completed articles. At a minimum, it will include the following controls.

a. Inspection Stations

Inspection stations will be at the best locations to provide for the work content and characteristics to be inspected. Stations will provide the facilities and equipment to inspect structural, electrical, hydraulic, and other components and assemblies for compliance with the design requirements.

Stations will also be at the best locations to inspect or test characteristics before they are concealed by subsequent fabrication or assembly operations. These locations will minimally include underbody structure completion, body-framing completion, body prior to paint preparation, water test before interior trim and insulation installation, engine installation completion, underbody dress-up and completion, vehicle prior to final paint touch-up, vehicle prior to road test, and vehicle final road test completion.

b. Inspection Personnel

Sufficient trained inspectors will ensure that all materials components, and assemblies are inspected for conformance with the qualified vehicle design.

c. Inspector Records

Acceptance, rework, or rejection identification will be attached to inspected articles. Articles that have been accepted as a result of approved materials review actions will be identified. Articles that have been reworked to specified drawing configurations will not require special identification. Articles rejected as unsuitable or scrap will be plainly marked and controlled to prevent installation on the vehicle. Articles that become obsolete as a result of engineering changes or other actions will be controlled to prevent unauthorized assembly or installation. Unusable articles will be isolated and then scrapped.

Discrepancies noted by the contractor or resident inspector during assembly will be entered by the inspection personnel on a record that accompanies the major component, subassembly, assembly, or vehicle from start of assembly through final inspection. Actions will be taken to correct discrepancies or deficiencies in the manufacturing processes, procedures, or other conditions that cause articles to be in nonconformity with the requirements of the contract specifications. The inspection personnel will verify the corrective actions and mark the discrepancy record. If discrepancies cannot be corrected by replacing the nonconforming materials, the procuring agency will approve the modification, repair, or method of correction to the extent that the contract specifications are affected.

d. Quality Assurance Audits

The quality assurance organization will establish and maintain a quality control audit program. Records of this program will be subject to review by the procuring agency.

e. Resident Inspector

SCTDD may be represented at the contractor's plant by resident inspectors. They will monitor, in the contractor's plant, the manufacture of vehicles built under this procurement. The resident inspectors will be authorized to approve the pre-delivery acceptance tests, and to release the vehicles for delivery. Upon request to the quality assurance supervisor, the resident inspectors will have access to the contractor's quality assurance files related to this procurement. These files will include drawings, material standards, parts lists, inspection processing and reports, and records of defects.

No less than thirty (30) days prior to the beginning of vehicle manufacture, the resident inspectors will meet with the contractor's quality assurance manager. They will review

the inspection procedures and checklists. The resident inspectors may begin monitoring vehicle construction activities two (2) weeks prior to the start of vehicle fabrication.

The contractor will provide office space for the resident inspectors in close proximity to the final assembly area. This office space will be equipped with desks, outside and interplant telephones, file cabinet, chairs, and clothing lockers.

The presence of these resident inspectors in the plant will not relieve the contractor of its responsibility to meet all of the requirements of this procurement.

49. ACCEPTANCE TESTS

a. Responsibility

Fully documented tests will be conducted on the production vehicle following manufacture to determine its acceptance to the procuring agency. These acceptance tests will include pre-delivery inspections and testing by the contractor, and inspectors and testing by the procuring agency after the vehicle has been delivered.

b. Pre-Delivery Tests

The contractor will conduct acceptance tests at its plant on the vehicle following completion of manufacture and before delivery to the procuring agency. These pre-delivery tests will include visual and measured inspections as well as testing the total vehicle operation. The tests will be conducted and documented in accordance with written test plans. Additional tests may be conducted at the contractor's discretion to ensure that the completed vehicle has attained the desired quality and has met the requirements in the technical specifications. This additional testing will be recorded on appropriate test forms provided by the contractor.

The pre-delivery test will be scheduled and conducted with sufficient notice so that they may be witnessed by the resident inspectors, who may accept or reject the results of the tests. The results of pre-delivery tests, and any other tests, will be filed with the assembly inspection records for the vehicle. The under floor equipment will be made available for inspection by the resident inspectors, using a pit or vehicle hoist provided by the contractor. A hoist, scaffold, or elevated platform will be provided by the Contractor to easily and safely inspect the vehicle roof. Delivery of the vehicle will require written authorization of a resident inspector. Authorization forms for the release of the vehicle for delivery will be provided by the contractor. An executed copy of the authorization will accompany the delivery of the vehicle.

x. Inspection-Visual and Measured

Visual and measured inspections will be conducted with the vehicle in a static condition. The purpose of the inspection testing is to verify overall dimensional and weight requirements, to verify that required components are included and are ready for operation and to verify that components and subsystems are designed to operate with the vehicle in a static condition to function as designed.

xi. Total Coach Operation

Total vehicle operation will be evaluated during road tests. The purpose of the road test is to observe and verify the operation of the vehicle as a system and to verify the functional operation of the subsystem that can be operated only while the vehicle is in motion.

The vehicle will be driven for a minimum of fifteen (15) miles during the road tests. Observed defects will be recorded on the test forms. The vehicle will be retested when defects are corrected and adjustments are made. This process will continue until defects or required adjustments are no longer detected. Results will be pass/fail for these vehicle operation tests.

xii. Heating and Air Conditioning Performance Tests

SCTDD reserves the right to require the contractor to test the performance of the heating and air conditioning system in the vehicle before shipment to SCTDD if it has reasonable cause to believe the vehicle does not meet the described standards. The heating test shall consist of placing the vehicle in an environmental test chamber and lowering the temperature of the room to Thirty (30) degrees F. with a relative humidity of twenty (20) to forty-five (45) percent. The vehicle will be cooled for a minimum of five (5) hours before the start of the test. Before starting the test, the main engine shall be started and brought to standard operating temperature. The vehicle will be cooled to a uniform fifteen (15) degrees F + or - three (3) degrees F. After the engine has been brought to normal operating temperatures the test shall start. All doors and windows shall be closed and only one (1) person shall be on the vehicle. The engine shall operate at a constant one thousand five hundred (1,500) RPM throughout the test. The heating system must be able to bring the inside temperature of the passenger compartment to a uniform sixty (60) degrees F. + or - three (3) degrees within thirty (30) minutes. The makeup air vent shall be open to allow ten percent (10%) air into the climate control system. The air around the vehicle will be kept at a constant fifteen (15) degrees + or - three (3) degrees throughout the test.

The air conditioning test shall consist of heating the vehicle to a uniform one hundred fifty (150) degrees F + or - two (2) degrees F. and soaking the vehicle at this temperature for a minimum of six (6) hours. Measurements will be taken four (4) feet from the floor in the center of the aisle of the passenger compartment. After the vehicle has been heated and soaked at the prescribed temperature, the

engine will be started and the air conditioning will be activated. All windows, vents, and passenger doors will be closed. Engine speed will stay at one thousand five hundred (1,500) RPM. The outside temperature will stay at one hundred fifty (150) degrees F + or – two (2) degrees F. The temperature of the air discharged from the condenser shall be monitored along with the high and low side readings of air conditioning compressor. In thirty (30) minutes or less the air conditioning system will bring the inside temperature to seventy –nine (79) degrees F + or – three (3) degrees when measured at all four (4) points listed above.

The heating and air conditioning test will be witnessed by SCTDD resident inspector and by the Transit Director. If the design of the air conditioning system or heating or ducts is modified during the production SCTDD reserves the right to have the heating and air conditioning test performed on the modified system.

c. Post –Delivery Tests

SCTDD may conduct acceptance tests on the delivered vehicle. These tests will be completed within fifteen (15) days after vehicle delivery and will be conducted in accordance with written test plans. The purpose of these tests is to identify defects that have become apparent between the time of vehicle release and delivery to the procuring agency. The post-delivery tests will include visual inspection and vehicle operations.

A vehicle that fails to pass the post-delivery tests is subject to nonacceptance. The procuring agency will record details of all defects on the appropriate test forms and will notify the contractor of nonacceptance of the vehicle within five (5) days after completion of the tests. The defects detected during these tests. The defects detected during these tests will be repaired according to procedures defined in solicitation, offer and award/contractual provisions.

xiii. Visual Inspection

The post-delivery inspection is similar to the inspection at the contractor’s plant and will be conducted with the vehicle in a static condition. Any visible delivery damage will be identified and recorded during the visual inspection of the vehicle.

xiv. Vehicle Operation

The road tests for total vehicle operation are similar to those conducted at the contractor’s plant. Operational deficiencies of the vehicle will be identified and recorded.

xv. Acceptance

Within fifteen (15) calendar days after arrival at the designated point of delivery in SCTDD the vehicle shall undergo SCTDD post-delivery inspection and test. If the vehicle passes this inspection and test, acceptance of the vehicle by SCTDD occurs on the fifteenth (15th) day after delivery. Acceptance may occur earlier if SCTDD notifies the contractor of early acceptance or places the vehicle in revenue service. If the vehicle fails the inspection test, SCTDD reserves the right to either have the contractor make the required repairs or make the repairs itself. If SCTDD makes the repairs they will be handled in accordance with the Warranty Provisions.

50. DESTINATION SIGNS

Space shall be provided in the front of the trolley, for an outside-facing display sign, an interior passenger facing display sign, and a right-side, outside facing display sign befitting the following dimensions:

NOTE: Display signs that will be used are proprietary sourced, and thus not included in this RFP. However, the position and sizing of these signs, the cabling conduit, power provisioning, and other such items are identical to the industry and will be included in this RFP.

Front Sign:

- Space provided for a 7.25-inch-high, 29-inch-wide LED display sign
- 12v Battery Power, 12v Ignition Power, and Grounding Block (or wire) provided through conduit

Side Sign:

- Space provided near the front of the trolley, near the boarding door, for a 7.25-inch-high, 26-inch-wide LED display sign
- 12v Battery Power, 12v Ignition Power, and Grounding Block (or wire) provided through conduit

Interior Sign:

- Location to mount a 2-inch-wide, 4.5-inch-high, 26-inch-wide LED display sign
- 12v Battery Power, 12v Ignition Power, and Grounding Block (or wire) provided through conduit

SIGN ENCLOSURES:

All Signs shall be enclosed in a manner such as to inhibit entry of dirt, dust, water and other contaminants during normal operation or cleaning. Access shall be provided to clean the inside of the Bus window(s) associated with the Sign and to remove or replace the Sign components. Access panels shall be mounted for ease of maintenance and replacement. The vehicle manufacturer shall comply with the Sign manufacturer's recommended mounting, mounting configuration, and installation procedures to assure optimum visibility and service accessibility of the Sign System and System components, which shall be provided by SCTDD to winning recipient.

INTERCONNECTING CABLING:

Data Communication	Single twisted pair (two conductors) cable
Power Cabling	Three conductors connecting to the switched and un-switched (battery) power and a return (battery).

51. Laptop Computer and Engine Diagnostic Software

Unless otherwise waved by SCTDD, Contractor will furnish each trolley bus with one laptop computer with at a minimum the following:

- Laptop computer with minimum 15.6" high-definition display
- Intel Core i5 or i7 processor
- 6GB DDR3 SDRAM memory
- 640GB hard drive
- Multiformat DVD / CD drive
- 6 cell lithium-ion battery
- AC power cable, power cord
- 2 high-speed USB ports
- 7-in-one media reader

Built in Intel wireless networking

Microsoft Windows 7 operating system

6-12 months of anti-virus protection

Laptop will be supplied with latest version of Cummin's "**Insite**" engine diagnostic software and service paid for 12 months.

52. Dispute / Protest / Appeal Process

Any protest or objection to the Conditions and Specifications will be submitted for resolution to SCTDD. Each protest must be made in writing and supported by sufficient information to enable a protest to be considered. A protest or objection will not be considered by SCTDD if it is insufficiently supported or if it is not received within five (5) calendar days after the announcement of RFP recipient.

Protest may be made by prospective proposers whose direct economic interest would be affected by the award of a bid or by failure to award a bid. The South Central Tennessee Development District will consider all protests requested in a timely manner regarding the award of a contract, whether submitted before or after the award. All protests are to be submitted in writing to Tammie Frazier, Transportation Mobility Coordinator, South Central Tennessee Development District, 101 Sam Watkins Blvd., TN 38474. Protest submissions should be concise, logically arranged, and clearly state the grounds for the protest. The protest submission must include at least the following information:

1. Name, address, and telephone number of the protester.
2. Identification of the solicitation or contract number
3. A detailed statement of the legal and factual grounds for the protest.
4. A statement as to what relief is requested

Protest must be submitted to the South Central Tennessee Development District in accordance with these procedures and in a timely manner. Protest must be complete and contain all issues that the protestor believes relevant. The decision of the South Central Tennessee Development District will be final and conclusive. Notice of the protest and the basis therefore will be given to all prospective Bidders or Proposers.

Any further appeal process arising from this proposal or subsequent contract shall be resolved through arbitration. Any litigation shall be handled under the jurisdiction of Maury County, Tennessee District Court. Any disputes, protests, or appeals to the RFP procedure process will be handled in accordance with the FTA Circular, FTA C 4220.1F, Third Party Contracting Guidance procedures.

53. Assignability Clause

The terms and provisions of the contract documents shall be binding upon SCTDD, the contractor and their respective partners, successors, heirs, executors, administrators, assigns, and legal representatives. The rights and obligations of the contractor under the contract may not be transferred, assigned, sublet, mortgaged, pledged, or otherwise disposed of or encumbered in any way without SCTDD's prior written consent. The contractor may subcontract a portion of its obligations to other governmental firms or parties, but only after having first obtained the written approval by SCTDD.

SCTDD may assign its rights and obligations under the contract to any successor of SCTDD or to any successor agency deemed necessary to the extent required by applicable laws or governmental regulations or to the extent SCTDD deems necessary or advisable under the circumstances. Right of assignment shall include FTA funded agencies and local governments with the approval of SCTDD. SCTDD shall provide assignment in writing, once assigned FTA funded successor agencies or local

government have been assigned. Such agency or government entity will be solely responsible for required purchases and/or certification.

Permission shall be granted by Responder for any FTA funded agencies and local governments to piggyback onto this proposal for the purpose of purchasing additional vehicles exactly as specified in this RFP based on the lifetime terms of this RFP. SCTDD shall incur no financial responsibility for any successor agency, or additional FTA funded agencies wishing to participate or purchase from an approved award or contract. Such agency or government entity will be solely responsible for purchases and costs, and will inherit and be bound by the terms of this agreement.

54. Proposal Postponement and Amendments

SCTDD reserves the right to postpone the proposal due date for their own convenience and to waive any minor informalities in proposals submitted. SCTDD may cancel the RFP completely or in part and re-advertise if adequate response is not received. If the RFP is re-advertised, prior RFP's shall remain closed to inspection until the evaluation of the re-advertisement is complete.

SCTDD reserves the right to revise, amend, or modify the specifications at any time up to the time set for receipt of the proposals. If it is appropriate to revise any portion of this RFP, either at the request of a Responder or upon SCTDD initiative, a written addendum will be issued setting forth the revision. Addenda will be forwarded to all Responders who received or requested the RFP and have submitted the Notice to Responders Form before the specified due date. Responders shall acknowledge receipt of addenda by completing the Acknowledgement of Addenda Form and returning with proposal. Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive. If the revisions and amendments are likely to require the revision of proposal prices the proposal opening date may be postponed by the number of days SCTDD feels necessary for Responder to revise their proposal. The response opening shall be at least five (5) working days after the last amendment, and the amendments shall include an announcement of the new date. All amendment(s) shall be acknowledged on the form found in the RFP. Should a Proposer find a discrepancy or omissions from these specifications, or be in doubt as to their meaning, they shall at once make inquiry in writing to SCTDD.

55. Legal Requirements

Responders must obtain and/or verify compliance with all state, local, and federal regulations and requirements, including the Federal ADA, Non-Discrimination, and other Federally mandated regulations. A complete list of the Federal Modal Clauses are available upon request from SCTDD.

a. Disadvantages Business Enterprise (DBE)

Please identify any participation in the project by disadvantaged business enterprises. SCTDD has established a project specific DBE goal for this acquisition at 1%. DBE's shall be given maximum opportunity to participate in contracting opportunities arising from this solicitation. Documentation demonstrating outreach efforts must be included in the proposer's response package.

b. The Sherman Anti-Trust Act

A responder, by signing and making this response, does further declare, in determining the prices and/or amounts of the items, that bidder has not colluded with any other person, firm, corporation or association in arriving at said prices and/or amounts or in any way violated the terms, conditions and/or spirit of the provisions of 15 U.S.C. 1 through 7 (Sherman Anti-Trust Act).

c. Title VI

It is the policy of the South Central TN Development District, as a grant recipient of the Tennessee Department of Transportation and the Federal Transit Administration, to ensure compliance with Title VI of the Civil Rights Act of 1964; 49 CFR, Part 21; related statutes and regulations to that end that no person shall be excluded from participation in or be denied benefits of, or be subjected to discrimination on the grounds of race, color, or national origin, under any program or activity receiving financial assistance from the U.S. Department of Transportation.

56. Indemnification and Hold Harmless

The Responder shall indemnify and hold harmless South Central Tennessee Development District and its Transportation Organization, their officers, agents and employees from:

- a) Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Responder, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the contract, and,
- b) Any claims, damages, penalties, costs and attorney fees arising from any failure of Responder, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- c) SCTDD will not indemnify, defend or hold harmless in any fashion the Responder from any claims arising from any failure, regardless of any language in any attachment or other document that the Responder may provide.
- d) Responder shall pay SCTDD any expenses incurred as a result of Responder's failure to fulfill any obligation in a professional and timely manner under this Contract.

Responder agrees that it shall indemnify and hold harmless SCTDD and SCTDD's directors, officers, and employees from and against any loss, damages, or injuries SCTDD and SCTDD's directors, officer, or employees shall suffer or incur as a result of any suit, claim, or proceeding based on Responder's failure to meet conditions, specifications, or deadlines; or of circumstances beyond the control of SCTDD. Responder shall pay any damages, costs, expenses, fees (including attorneys' fees) incurred by SCTDD or SCTDD's directors, officers, or employees, provided that SCTDD gives Responder prompt

notice of any such claim and SCTDD does not enter or propose to enter into any settlement of such suit, claim or proceeding without Responder's written consent.



FEDERAL PROCUREMENT CLAUSES

Note: All clauses may not apply

CERTIFICATIONS FOR CAPITAL PROCUREMENT +\$5,000.00 BY BID PROCESS

The undersigned: _____ as a representative of the
(PRINT NAME)

Vendor: _____ hereby. Certifies that the vendor has read and understands the following Federal procurement clauses and will comply with each of these:

- 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 (Non-procurement)
- 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
- 32. Certification of Compliance

*All clauses may not apply; bidder must sign stating they have read and understand the clauses and will be able to comply. Bidder must return a signed copy of this form. For more information concerning FTA clause requirements visit http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html Circular FTA C 4220.1F.

Signature

Date

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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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.

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 CFR 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 C.F.R. 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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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. 5318(e)

49 CFR Part 665

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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"

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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.

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

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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

These requirements flow down to all 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

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. (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. (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. (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

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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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 the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

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

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

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

- j. **Termination for Convenience or Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice 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)

49 CFR Part 29 Executive Order 12549

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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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 shorten 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 or 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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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 - This 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.)

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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 the 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, *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 __ %. A separate contract goal [**of __ % 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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

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).