

# Washington Metrorail Safety Commission



## Request For Quotation RFQ 2024.001

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### Solicitation for Human Resource Generalist Services Contract

DATE: March 15, 2024

E-MAIL: [procurement@wmisc.gov](mailto:procurement@wmisc.gov)

**NOTE:**

**THIS REQUEST FOR QUOTATION IS BEING ISSUED UNDER THE SMALL PURCHASE PROCEDURES. THE SMALL PURCHASE PROCEDURES ARE FOR PROCUREMENTS EXCEEDING \$10,000 BUT NOT EXCEEDING \$250,000. ANY RESPONSE OVER \$250,000 WILL NOT BE CONSIDERED.**

**THERE WILL BE NO FORMAL BID OPENING FOR THIS PROCUREMENT.**

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**REQUEST FOR QUOTATION PRICE SCHEDULE**

Vendor must provide a quotation that fully explains the proposed Human Resource Generalist services as specified in Section II(a) of this Request for Quotation. Pricing in the matrix below should be submitted for segment totals only and must be supplemented with a detailed staffing services pricing submittal for professional services required by the Federal Transportation Administration as a recipient of Federal Grant Awards. The Vendor must provide a separate pricing for optional audit service contracts for each base and option years, as applicable.

Fees must be fully loaded and include costs for each year including the Two (2) additional One (1)-year options. An itemized cost breakdown must be submitted for the HR Generalist and any additional staff. WMSC requires the total costs be stated as a “not to exceed” basis. The “not to exceed” fee must be inclusive of labor, travel, report preparation, printing, and all other expenses incurred by the HR Generalist. Fees must be billed monthly based on work completed. Payments will be made in arrears. The WMSC will reimburse the Consultant as promptly as practical after receipt of acceptable invoices which detail the expenses, hours and the period for which payment is requested.

The Washington Metrorail Safety Commission (“WMSC”) hereby requests your quotation for the services in the Cost Quotation Matrices that follow.

## PRICE SCHEDULE

### Cost Summary – Fiscal Year Ending June 30th

Service	2025	2026	2027
HR Generalist Services	\$	\$	\$
	\$	\$	\$
<b>TOTAL FOR FISCAL YEAR (not-to-exceed)</b>	\$	\$	\$

## SUPPLEMENTAL DETAILED PRICE SCHEDULE

### Hours and Rate Estimate by Year

Provider	2025	2026	2027
	<i>Hours/Rate</i>	<i>Hours/Rate</i>	<i>Hours/Rate</i>
Lead HR Generalist	/	/	/
Other (Specify)	/	/	/
Other (Specify)	/	/	/

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**STATEMENT OF WORK**

**I. Introduction**

**General Information**

The Washington Metrorail Safety Commission is requesting quotations from qualified firms to perform Human Resource (HR) Generalist Services beginning July 1, 2024, with the Base Year Ending June 30, 2025. The WMSC is contemplating awarding a contract with one (1) 12- month base year and renewal options for two (2) additional one-year terms.

There is no expressed or implied obligation for the WMSC to reimburse responding firms for any expenses incurred in preparing quotations in response to this request. Quotations submitted are subject to public inspection and will be evaluated by a review committee.

The WMSC reserves the right, where the WMSC determines it serves in its best interest, to request additional information or clarification from proposers, or to allow corrections of errors or omissions. At the discretion of the WMSC, firms submitting quotations may be requested to make oral presentations as part of the evaluation process.

The WMSC reserves the right to retain all quotations submitted and to use any idea in a quotation regardless of whether that quotation is selected. Submission of a quotation indicates acceptance by the firm of the conditions contained in this Request for Quotation, unless clearly and specifically noted in the quotation submitted and confirmed in the contract between the WMSC and the firm selected.

The WMSC has determined a desire to establish this agreement under a Disadvantaged Business Enterprise (DBE) provision thereby seeking Vendors that can meet the aspired 25% or greater goal for DBE participation.

The WMSC anticipates selecting a firm by May 15, 2024. Following the notification of the selected firm, the WMSC anticipates that a recommendation and proposed contract will be prepared for review and approval by the Commission. The WMSC reserves the right to reject any quotation, to waive any non-material irregularities or information in any quotation, and to accept or reject any item or combination of items.

## **II. Scope of Work**

A Human Resources Generalist provides services to all the employees within an organization. HR Generalists manage the daily operations of HR departments by executing HR policies and procedures, initiating resource planning and recruitment, and maintaining communication. They also assist with hiring, onboarding, various training programs, ensuring accurate and timely payroll processing, and handling employee relations, exit procedures, and benefits. Apart from these duties, an HR Generalist is also responsible for overall HR program compliance, as well as employee evaluation and appraisals and complaints and grievances.

The WMSC has a business relationship in place with a Professional Employer Organization (PEO). The PEO provides payroll services, benefits administration, HR tax administration, and an employee HR portal. The HR Generalist will advise and assist the WMSC in its interactions with the PEO and will help WMSC management best utilize and continually review current PEO services, and evaluating options for and supporting any transition to future PEO service providers.

Firms are invited to propose a Lead HR Generalist and may also include one or more additional supporting HR Generalists (or closely related professionals with different titles) to assist and support the Lead HR Generalist.

The following scope of work is included, but not limited to, the services required to be provided by the HR Generalist:

- Creating an employee recruiting plan and calendar to meet organizational needs.
- Setting standards to promote positive and productive culture.
- Generating official internal documents such as offer letters, appointment letters, salary slips and warning letters.
- Creating onboarding plans and educating newly hired employees on HR policies, benefits, internal procedures, and regulations
- Maintaining digital files for employees and their documents, benefits, and attendance records
- Collaborating with outside vendors, executive management, and employees to maintain required standards.
- Managing employee performance programs and appraising their pay scale accordingly for recommendation to management
- Recommending appropriate disciplinary action for employees and addressing employee grievances.
- Continually evaluating employee benefits programs, including specialized leave programs, and providing suggested improvements or alternatives.

To effectively provide HR services to WMSC employees, an HR Generalists should have certain hard and soft skills, including:

- Knowledge of administrative tasks and responsibilities
- Excellent verbal and written communication skills

- Advanced computer skills, including data entry, data processing, communication tools and payroll and human resources software
- Problem-solving skills and resourceful thinking
- Leadership and coaching skills
- Strong empathy and interpersonal skills
- Detail-oriented with excellent organizational skills
- Attention to detail and analytical.

### **HR Generalist Education and Training Requirements**

The educational requirement for the candidate is a Bachelor's Degree in Human Resources, Business, or another related field. Over 10 years of practical experience in a role equal to or higher than the HR Generalist will be considered in lieu of the education requirement. Candidates with a Master's Degree in Human Resources Management will be preferred. Candidates with advanced certification, such as Professional (PHR), Senior Professional (SPHR) or Global Professional (GPHR) in Human Resources are desired.

### **HR Generalist Experience Requirements**

An HR Generalist candidate must demonstrate experience in conducting successful recruitment procedures, and they should know how to take care of all duties related to employee relations, including benefits selection and administration, HR compliance activities, payroll and performance management, onboarding and offboarding, and employee relations and complaints. Candidates meeting the Education requirement must demonstrate 5 years of practical experience in an HR position equal or greater to the HR Generalist position. Candidates with previous experience in other HR positions, such as HR Assistant, may be considered if they are familiar with typical human resources procedures and hold an educational degree in Human Resources.

### **Proposer Firm Experience Requirement**

The Proposer firm must provide references for Human Resource Management professional services delivered to other clients that meet this Request for Quotation's scope of work and is of similar size and complexity. References should include the nature of the work, the scope of services, duration and the time period that the work was performed.

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**PERIOD OF PERFORMANCE**

The contract period of performance is from the Date-of-Award through June 30, 2027, if all options to renew are exercised subject to the satisfaction of the Base Year performance by the WMSC.

**VENDOR RESPONSIVENESS AND RESPONSIBILITY**

**Minimum Requirements for Responsiveness:** The Vendor must comply with all aspects of the statement of work (“SOW”). The Vendor must complete and return this Request for Quotation with the required price quotation that must include the **Price Schedule** and the **Supplemental Detailed Price Schedule** located on **Page 2**, and the additional **Certifications** found in **Appendix B**. Failure to submit the required **Price Schedules** and **Appendix B** Certifications may result in the Vendor being deemed non-responsive.

**Minimum Requirements for Responsibility.** Vendor must be in good standing and authorized to transact business in the District of Columbia and must not be listed in the System for Award Management (SAM) as an excluded party. Failure to demonstrate compliance will result in being deemed not responsible.

The Vendor **must** submit 1 copy of their Price Proposal and required executed certifications, electronically to WMSC, at the following email: [procurement@wmsc.gov](mailto:procurement@wmsc.gov)

**WMSC TAX EXEMPTION**

- a. Pursuant to Article V, Section E.45 of the Washington Metrorail Safety Commission Compact, Pub. L. 115-54, as adopted by the State of Maryland, the District of Columbia, and the Commonwealth of Virginia, the WMSC has been accorded exemption from taxes as follows:

"The exercise of the powers granted by this MSC Compact shall in all respects be for the benefit of the people of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland and for the increase safety, commerce, and prosperity, and as the activities associated with this MSC Compact shall constitute the performance of essential governmental functions, the Commission shall not be required to pay any taxes or assessments upon the services or any property acquired or used by the Commission under the provisions of this MSC Compact or upon the income therefrom, and shall at all times be free from taxation within the District of Columbia, the Commonwealth of Virginia, and the State of Maryland."

- b. By submission of its quotation, the vendor certifies that none of the taxes as to which the WMSC is exempt are included in its quoted price(s).



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**CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)**

- a. The work will be conducted under the general direction of the WMSC Chief Executive Office ("CEO"). Authority may be delegated to the WMSC Chief Financial Officer ("CFO") to take the following actions:
  1. Act as the principal point of contact with the Vendor. A copy of each item of incoming correspondence and a copy of any enclosures must also be submitted to the CFO.
  2. Review and approve invoices and payment estimates. Forward invoices and receipts to accounting.
  3. Coordinate correspondence with the CEO if its importance significantly impacts the contractual terms and obligations. Where such coordination is unnecessary, provide an information copy to the CFO.
  4. Provide the CEO with information copies of any memorandum of record which is relative to the contract, provide an information copy to the CFO.
  5. Notify the CFO whenever there is reason to believe that the proposed not-to-exceed amount will be exceeded.
  6. Prepare the WMSC estimate for proposed contract modifications. Participate in negotiations of modifications.
  7. Approve, in writing, the Vendor's progress schedule when required.
  8. Receive from the Vendor monthly, if applicable, Disadvantaged Business Enterprise ("DBE") status reports.
- b. There are certain actions which are reserved for only the CEO. They are:
  1. Approval of contract modification quotations.
  2. Issuance of written orders to stop or resume work under Article 10, "Stop Work Orders", of the General Provisions.
  3. Negotiation with the Vendor for adjustment of contract price or time.
  4. The CFO is not authorized to render final decisions under the DISPUTES article of the General Provisions.

5. The CFO is not authorized to issue Termination Notices.
6. The presence or absence of the CFO must not relieve the Vendor from any requirements of the contract.

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**PROPOSAL EVALUATION**

The WMSC will examine and evaluate all submissions for the purpose of ascertaining each submission's qualification, completeness, and responsiveness to the provisions of this Request for Quotation. Offerors that do not meet the mandatory minimum requirements will be eliminated from further consideration.

No.	RFQ-24-001 Human Resources Generalist Services Evaluation Criteria		Maximum Points	
1	Minimum Requirements Criteria (Pass/Fail)			
1a	Provide evidence that the Proposer meets the minimum requirements criteria that is set forth in the Vendor Responsibility section, and all of the Required Forms provided in Appendix		Pass/Fail	
2	Qualification, Education, Experience & Availability of Candidate		Total: 65	
2a	General Qualifications	Overall qualification of the firm/candidate based on education, past contract experience and organization structure. Provide examples of recent similar contracts held by the firm to include references.		
3	Methodology & Work Plan		Total: 20	
3a	Approach & Methodology	The proposer shall explain their understanding of the tasks in the Scope of Work. Identify standard practices in the industry via examples of similar tasks or projects that they have completed.		
4	Quality Assurance/Quality Control		Total: 15	
4a	Quality Assurance/ Quality Control	Detail the processes and procedures proposer has in place to assure quality assurance and quality control including the reporting mechanisms to the WMSC and internal processes for addressing oversight.		
		<b>Total Score:</b>	<b>100</b>	

The top qualified candidates may be scheduled for an interview for review and ranking based on the review. A recommendation for award of a contract will be made to the WMSC Commissioners.

Proposers must demonstrate the firm's ability to execute its experience in delivering the professional services required in this RFQ with references to other clients of similar size and scope.

Proposers whose submissions are determined by the WMSC to be non-responsive or unqualified will be notified of their rejection in writing by the WMSC. The notification will be issued by the WMSC after consideration of the quotation results by the WMSC Commissioners.

The WMSC reserves the right to retain all quotations submitted and use any idea in a submission regardless of whether that submission is selected. The WMSC also reserves the right, without prejudice, to reject any or all quotations submitted. Award of the contract will be made to the independent audit firm that, based on evaluation of all responses and criteria, is determined to be the best qualified to meet the WMSC's human resources needs.

Quotations will be evaluated by the WMSC on the criteria stated above utilizing a numeric rating system. All criteria are equally weighted for evaluation scoring purposes. The **Scoring Sheet** is located at **APPENDIX D**.

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**SOLICITATION INSTRUCTIONS**

1. **Type of Contract:** The WMSC contemplates award of a Fixed Price (Rate) Requirements contract resulting from this solicitation.
2. **Basis for Award:** The WMSC will issue a best value award contract to the lowest responsive and responsible offeror whose offer conforms to this Request for Quotation (“RFQ”) and is determined to be the most advantageous to the WMSC, considering qualifications and price related factors included in the RFQ.

If, after receipt of the quotations, the CEO determines that adequate price competition does not exist, the Offeror must provide certified cost or pricing data as requested by the CEO.

3. **Acceptance or Rejection of Quotations:** The WMSC reserves the right to accept or reject any or all offers on any or all items within 5 calendar days from the date set for opening of solicitations.
4. **Minimum Acceptance Period:** The WMSC requires a minimum acceptance period of 30 calendar days.
5. **Submittal of Quotations:** Quotations will be electronically emailed to:

**Quotation to:** Attn: Procurement  
(202) 384-1520

**E-Mail:** [procurement@wmisc.gov](mailto:procurement@wmisc.gov)

Quotation must be received by the WMSC no later than **April 15, 2024, 11:00 am, Eastern Daylight Time (EDT).**

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**GENERAL TERMS AND CONDITIONS**

**1. INSPECTION AND ACCEPTANCE.** Inspection and acceptance will be at destination, unless otherwise provided. – Not applicable for this solicitation

**2. DISCOUNTS.** Discount time will be computed from date of delivery at the place of acceptance or from receipt of correct invoice at the office specified by the WMSC, whichever is later. Payment is made, for discount purposes, when the check is mailed.

**3. STATE AND LOCAL TAXES.** The WMSC is exempt from all state and District of Columbia municipal and local taxation. The WMSC's tax exemption numbers are as follows: District of Columbia L0002716503f and for Virginia, is issued on a case-by-case basis through the filing of the Virginia Form ST-12.

**4. GARNISHMENT OF PAYMENTS OWED TO WMSC VENDORS.** Payment under the contract is to be subject to any garnishment and attachment orders issued pursuant to the laws of Maryland, Virginia, and the District of Columbia, and to levies issued under the laws of the United States.

**5. INDEMNIFICATION.**

1. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the WMSC and its Board of Commissioners, officers, agents, and employees, from all claims, liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees (and other legal costs such as those for paralegal, investigative, legal support and the actual costs incurred for expert witness testimony), to the extent caused in whole or in part by the acts, errors, omissions, negligence, recklessness, or willful misconduct of the Contractor, one of its Subcontractors, any persons or entities directly or indirectly employed or utilized by the Contractor, its Subcontractor, or anyone for whose acts they may be liable, in the performance of this Contract. This indemnification obligation includes any penalties or fines assessed by any federal, state, or local agency, as well as any other costs to the WMSC, such as investigation and security training, incurred as a result of any violation of federal, state, or local regulations by the Contractor, its Subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. The Contractor shall also defend, indemnify, and hold harmless the WMSC and its members, officers, agents and employees against any assertion of claims for failure of payment, or failure to provide appropriate bonds, made by Subcontractors or material Suppliers, and against any assertions of security interests by Suppliers of goods, services or materials. The Contractor's indemnification obligation shall also extend to all claims, demands, expenses, and costs asserted by third parties arising from Contractor's failure to perform strictly in accordance with this Contract, including, without limitation, any delays to the project. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which

would otherwise exist.

2. The indemnification obligations of this Contract shall not be limited or reduced by Liquidated Damages that may be assessed against the Contractor or by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor, a Subcontractor, or Subcontractor under workers' compensation acts, disability benefits acts, or other employee benefit acts. The WMSC's right to indemnification is in addition to and not in lieu of any other right, obligation, or remedy under the Contract or applicable law, including, without limitation, the WMSC's ability to assess Backcharges and Liquidated Damages.

3. The indemnification provisions shall survive the expiration or termination of this Contract. The WMSC may seek indemnification at any time.

4. In the event applicable law renders any provision of this Article void or unenforceable, then then the following indemnification obligations shall apply to the extent such provision is deemed void: Contractor shall indemnify and hold harmless the Authority, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.

5. The Vendor will save, keep harmless, and indemnify the WMSC against any liability claims, and the cost of whatsoever in and nature (including legal expenses) arising or alleged to have arisen for injury, including personal injury to or death of person or persons, and for loss or damage to any property, occurring in connection with activities to be performed under the Contract and any acts of the Vendor in connection with activities to be performed under the Contract, resulting in whole or part from the acts, errors, or omissions of the Vendor, any subcontractor, employee, agent or representative of the Vendor or subcontractor.

**6. COVENANT AGAINST CONTINGENT FEES.** The vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty, the WMSC may annul this contract without liability or, the WMSC's discretion, deduct from the contract price or consideration, or otherwise recover, the full amount of such omission, percentage, brokerage or contingent fee.

**7. GRATUITIES.** The WMSC may, by written notice to the Vendor, terminate the right of the Vendor or proceed under this Contract if it is found, after notice and hearings by the WMSC CEO, or his duty authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Vendor, or any agent or representative of the Vendor, to any Director, Officer or employee of the WMSC or its general consultants with the view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or

the making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the WMSC CEO or his duly authorized representative make such findings must be in issue and may be reviewed in any competent court.

## **8. Ownership of Documents and Inspection of Work**

1. Contractor shall promptly and fully disclose to WMSC any copyrightable, patentable, and/or trademarkable material prepared in whole or in part during the term of this Contract and which relates, directly or indirectly, to the Scope of Work and will be considered “work for hire” and the copyright, patent, and/or trademark shall at all times be vested in WMSC.
2. All correspondence, documents, drafts, data compilations and tabulations, research, analysis, plans, reports, and work product of any kind, in any medium, submitted to or prepared by or for the Contractor in connection with the Contract, are the sole property of the Authority and shall be scanned into electronic format and provided to the WMSC in an indexed, logical, searchable format on computer Compact Disks (CDs) or other format acceptable to the WMSC. Such correspondence must be provided to the WMSC within thirty (30) days of the close-out of the assigned project and must be received before the WMSC will release final payment to the Contractor. The original documents shall be maintained by the Contractor for a period of five (5) years after the completion of final payment by the WMSC, or longer if required by law. Thereafter, or upon termination of this Contract for any reason, such records shall immediately be delivered to the WMSC.
3. The WMSC will have the right to visit the Contractor's site for inspection of any materials or any part of the Contractor's work at any time during reasonable work hours. In addition to the inspection and audit rights set forth herein, the WMSC, its agents, and employees may perform inspections of the work at any reasonable time and at any stage of production. Such inspection or failure to inspect on any occasion shall not affect the WMSC's rights, or the Contractor's obligations, under warranty or other provisions of this Contract, nor shall such inspection be deemed acceptance of services.

## **9. Conflict of Interest**

1. The Contractor shall not promise any employee of the WMSC, whose duties include matters relating to or affecting the subject matter of this Contract, compensation of any kind or nature from the Contractor, while such employee is employed by the WMSC, or for one (1) year thereafter.
2. The Contractor affirms that it will not take part in any activities that will be a conflict of interest with the WMSC or that would appear to compromise the integrity of the WMSC. The Contractor shall provide written notice to the WMSC immediately upon occurrence or first identification of any potential conflict of interest situation.
3. Upon request by the WMSC, the Contractor shall execute any Conflict of Interest Certification that may be required.



## **10. Debarred Proposers**

The Contractor has a continuing obligation to inform the WMSC whether it is or has been placed on any debarred, suspended, or excluded parties list maintained by the United States Government or the District of Columbia. Should the Contractor, including any of its officers or holders of a controlling interest, be included on such a list during the performance of this Contract, the Contractor shall immediately inform the WMSC. This obligation must be included in all subcontracts.

## **11. Disputes, Defaults and Remedies**

1. Upon a breach of any of the obligations of the Contractor or the WMSC hereunder, the non-breaching Party shall have all of the rights and remedies provided under law including those referenced in 2 CFR part 1201, Super Circular 2 CFR Part 200 and FTA Circular 4220.1F, as revised, as well as those rights and remedies specified elsewhere in this Contract.
2. During any dispute, unless otherwise directed by the WMSC, the Contractor shall continue to diligently perform the work while matters in dispute are outstanding, unless a Notice of Termination has been issued by the WMSC.
3. Should the Contractor suffer injury or damage to person or property because of any act or omission of the WMSC, or any of the WMSC's employees, agents, or others for whose acts the WMSC is legally liable, a claim for damages therefore shall be made in writing to the WMSC within fourteen (14) days after the first observance of such injury or damage. The failure to timely submit a written claim shall result in a waiver the Contractor's claim.
4. Disputes arising in the performance of this Contract shall be decided in writing by the WMSC's Chief Financial Officer, and the decision rendered shall be final and conclusive for the WMSC.
5. Mandatory Mediation. All disputes arising out of or relating to the Contract shall be subject to mandatory pre-suit mediation under the auspices of a mediator to be selected by the Parties. Mediation must occur before a lawsuit is filed. Discovery prior to the scheduled mediation shall be limited to one (1) request for production of documents and two (2) depositions per Party not exceeding eight (8) hours total time per deposition. Each Party shall equally bear the costs of mediation and shall be solely responsible for its own attorneys' fees and other legal costs prior to and during the mediation process. In the event the case does not settle at mediation, the Parties may re-depose either or both witnesses on non-repetitive matters. The Contractor acknowledges that the WMSC may not have present at any such mediation a person or persons authorized to bind the WMSC. If the mediation fails to produce a settlement, and the amount in controversy is below Seventy-Five Thousand Dollars (\$75,000.00), the Parties may agree to submit the dispute to fast-track arbitration with an AAA arbitration panel.

## **12. Equal Employment Opportunity and Nondiscrimination**

1. The Contractor will comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, creed, color, sex, sexual orientation, gender identity, pregnancy, genetic information, national origin, age, disability, religion, family status or other protected class in the performance of work under this Contract. The Contractor assures that it will comply with pertinent statutes, executive orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, sex, sexual orientation, gender identity, pregnancy, genetic information, national origin, age, disability, religion, family status or other protected class be excluded from participating in any activity conducted under this Contract. This provision binds the Contractor from the Solicitation period through the completion of the Contract.
2. The Contractor shall permit access to its books, records, accounts, other sources of information, and its facilities, as may be determined by the WMSC to be pertinent to ascertain compliance with this section.

## **13. Drug-Free Workplace**

The Contractor and its subcontractors shall maintain a drug-free workplace and otherwise comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C. §§ 701-707. Without in any way limiting the foregoing, the Contractor and its subcontractors shall provide a drug-free workplace by:

1. Publishing a statement (1) notifying employees that unlawfully manufacturing, distributing, dispensing, possessing, or using a controlled substance in the Contractor's (subcontractors') workplace is prohibited; and (2) specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing a drug-free awareness program to inform employees about:
  - a. The dangers of drug abuse in the workplace;
  - b. The Contractor's (subcontractors') policy of maintaining a drug-free workplace;
  - c. Any drug counseling, rehabilitation, and employee assistance programs that are available; and
  - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of this Contract be given a copy of the statement required by paragraph (1);

4. Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under this Contract, the employee will abide by the terms of the statement and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) business days after such a conviction;
5. Notifying the WMSC within ten (10) business days of receiving notice under subparagraph (4) from an employee, or within ten (10) business days of otherwise receiving actual notice of an employee's conviction;
6. Taking one of the following actions, within thirty (30) business days of receiving notice under subparagraph (5), with respect to any employee so convicted:
  - a. Taking appropriate personnel action against such an employee, up to and including termination; or
  - b. Requiring such an employee to satisfactorily participate in and complete a drug-abuse assistance or rehabilitation program that is approved by a federal, state, or local health or law enforcement agency, or other appropriate agency as may be the case; and
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (1), (2), (3), (4), (5) and (6).

#### **14. Subcontracts**

1. The Contractor shall be fully responsible for the performance of all services under this Contract, including when the services are performed by a subcontractor or supplier. At all times, the Contractor shall be responsible for the effort, activity, and quality of services of its subcontractors and suppliers, and at no time shall the WMSC have any responsibility for or contractual relationship with any such subcontractors or suppliers, whether by reason of the above-stated references, consent, approval, or otherwise.
2. The Contractor shall utilize those subcontractors who were identified in its Proposal, except that the Contractor shall not subcontract with a proposed person or entity to whom the WMSC has made reasonable and timely objection.
3. When the subcontract is to provide services, the subcontract shall include the specific key staff members, man-hours, rates, tasks assigned, and all other costs and compensation associated with carrying out the services.
4. The Contractor shall maintain records of payments to all subcontractors for five (5) years following the completion or termination of this Contract, and records of such shall be made available to the WMSC immediately upon request. The Contractor shall report to the WMSC the portion of each payment made by the Authority (directly or indirectly) which is owed by the Contractor to a subcontractor, and whether such subcontractor is or is not a DBE firm.

5. Prompt Payment (49-CFR Part 26.29). Prime contractors are required to pay all subcontractors, to include DBE subcontractors, for satisfactory performance of their contracts within seven (7) business days from receipt of each payment from the WMSC. The Contractor agrees further to return retainage payments to each subcontractor within seven (7) business days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the WMSC. This clause applies to both DBE and non-DBE subcontractors. Failure to comply may result in future withholdings of prime contractor's reimbursements and/or other sanctions until the prime contractor ensure all subcontractors are being promptly paid for all work performed.
6. The Contractor shall insert the appropriate provisions from the Solicitation and this Contract in all subcontracts under this Contract, including any applicable Required Clauses For FTA-Assisted Contracts. The Contractor shall also require all lower tier suppliers and subcontractors of any tier to insert these clauses into all lower tier subcontracts, without modification. The Contractor shall be responsible for compliance by any subcontractor or any lower tier supplier with the clauses and shall ensure that this Contract and all subcontracts of any tier are performed in accordance with the Contract provisions.

#### **15. Non-exclusive Contract**

This Contract is not exclusive. The WMSC expressly reserves the right to contract for performance of services such as those described herein, and in the Solicitation, with other Contractors.

#### **16. No Waiver**

Failure by either Party to insist upon strict performance of any of the provisions herein; failure or delay by either Party in exercising any rights or remedies provided herein or by law; the WMSC's payment in whole or in part for services hereunder; or any purported oral modification or rescission of this Contract by an employee or agent of either Party shall not: (1) release either Party of any of its obligations hereunder; (2) be deemed a waiver of the rights of either Party to insist upon strict performance hereof; (3) be deemed a waiver of any of either Party's rights or remedies under this Contract or by law; or (4) operate as a waiver of any of the provisions hereof or constitute acquiescence therein. No waiver of any default or breach hereunder shall extend to or affect any subsequent or existing default or breach.

#### **17. Confidential Information**

1. By virtue of this Agreement, the Parties may have access to information about the other Party that such Party considers confidential, including by way of example and not limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, clients, finances, and personnel data related to the business affairs of both Parties, terms and pricing under this Agreement, the WMSC's intellectual property which means any and all intellectual property and tangible embodiments thereof, including without limitation inventions, discoveries, designs,

specifications, developments, methods, modifications, improvements, processes, know-how, techniques, algorithms, databases, computer software and code, mask words, formula, techniques, graphics or images, text, audio or visual works, materials that document design or design processes, or that document research or testing, schematics, diagrams, product specifications and other works of authorship and all information clearly identified as confidential at the time of disclosure (“**Confidential Information**”).

2. A Party’s Confidential Information shall not include information that: (i) is or becomes a part of the public domain through no act or omission of the other Party; (ii) was in the other Party’s lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party; (iii) is lawfully disclosed to the other Party by a third-party without restriction on the disclosure; or (iv) is independently developed by the other Party.

3. The Parties agree to hold each other’s Confidential Information in confidence and agree to disclose Confidential Information only to those employees or agents who are required to protect it against unauthorized disclosure in a manner no less protective than under this Agreement, and otherwise to maintain Confidential Information in accordance with reasonable business practices. Nothing will prevent either Party from disclosing the terms or pricing under this Agreement in any legal proceeding arising from or in connection with this Agreement or from disclosing the Confidential Information to a governmental entity as required by law.

### **FEDERALLY REQUIRED PROVISIONS**

The WMSC is the recipient of Federal grant funding from FTA. The WMSC is required to incorporate the following provisions in all contracts of the scope of the proposed procurement, and Vendor will be required to include these provisions in its contracts with sub-vendors of any tier. The **Matrix of FTA Third-Party Contract Clauses** is provided in **Appendix A**. The specific clauses highlighted in the Matrix are applicable to this solicitation.

**APPENDIX A**

**MATRIX OF FTA THIRD-PARTY CONTRACT CLAUSES**

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## **MATRIX OF FTA THIRD-PARTY CONTRACT CLAUSES**

(This matrix does not apply to micro-purchases,<sup>1</sup> except that Davis Bacon requirements apply to all federal construction contracts over \$2,000)

Last revised: December 1, 2023

**This Matrix is not meant to be all inclusive. Please review the specific funding source, as well as all clauses for applicability to the type of contract and flow down requirements.**

**Highlighted column has been added for convenience in identifying which clauses are applicable to the solicitation/contract.**

	<i>CLAUSE</i>	<i>TYPE OF PROCUREMENT</i>				
		<i>Professional Services/A&amp;E</i>	<i>Operations/ Management/ Subrecipients</i>	<i>Rolling Stock Purchase</i>	<i>Construction* (*See Note Below)</i>	<i>Materials &amp; Supplies</i>
1.	<a href="#"><u>No Federal Government Obligations to Third Parties (by use of a Disclaimer)</u></a>	All	All	All	All	All
2.	<a href="#"><u>False Statement or Claims: Civil and Criminal Fraud</u></a>	All	All	All	All	All
	<a href="#"><u>Notice to FTA and U.S. DOT Inspector General of Information Related to</u></a>	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs

<sup>1</sup> Currently set at \$10,000. 2 CFR § 200.320.

\* Per 41 CFR Part 60- 1.3, *Construction work* means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

	CLAUSE	TYPE OF PROCUREMENT				
		Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction* (*See Note Below)	Materials & Supplies
	<a href="#">Fraud, Waste, Etc.</a>					
3.	<a href="#">Access to Third Party Contract Records</a>	All	All	All	All	All
4.	<a href="#">Changes to Federal Requirements</a>	All	All	All	All	All
5.	<a href="#">Equal Employment Opportunity (Except Special DOL EEO clauses for construction projects)</a>	All	All	All	All	All
6.	<a href="#">Incorporation of FTA Terms</a>	All	All	All	All	All
7.	<a href="#">Energy Conservation</a>	All	All	All	All	All
8.	<a href="#">Termination (not required of states)</a>	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
9.	<a href="#">Debarment and Suspension</a>	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
10.	<a href="#">Buy America</a>			>\$150,000	>\$150,000	>\$150,000
11.	<a href="#">Resolution of Disputes, Breaches, or Other Litigation</a>	>\$250,000 (see Note)	>\$250,000 (see Note)	>\$250,000 (see Note)	>\$250,000 (see Note)	>\$250,000 (see Note)



	CLAUSE	TYPE OF PROCUREMENT				
		Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction* (*See Note Below)	Materials & Supplies
12.	<a href="#">Lobbying</a>	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
13.	<a href="#">Clean Air</a>	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
14.	<a href="#">Clean Water</a>	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
15.	<a href="#">Cargo Preference</a>			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
16.	<a href="#">Fly America</a>	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air
17.	<a href="#">Davis Bacon Act and Copeland Anti-Kickback Act</a>				>\$2,000 (including ferry vessels)	
18.	<a href="#">Contract Work Hours &amp; Safety Standards Act</a>		Contracts >\$250,000 (transportation services excepted.)	>\$250,000	>\$250,000 (also ferries.)	
19.	<a href="#">Bonding</a>				>\$250,000	

	CLAUSE	TYPE OF PROCUREMENT				
		Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction* (*See Note Below)	Materials & Supplies
20.	<a href="#">Seismic Safety</a>	A&E for new buildings & additions			New buildings & additions	
21.	<a href="#">Transit Employee Protective Arrangements</a>		FTA programs involving public transportation operations funded with 5307-5312, and 5316			
22.	<a href="#">Charter Service Operations</a>		All transit operations contracts involving FTA funding under 49 USC 5307, 5309, 5311 or 5316 funds			
23.	<a href="#">School Bus Operations</a>		All transit operations contracts			
24.	<a href="#">Drug Use and Testing/ Alcohol Misuse and Testing</a>		All transit operations contracts			

	CLAUSE	TYPE OF PROCUREMENT				
		Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction* (*See Note Below)	Materials & Supplies
25.	<a href="#">Patent Rights, and Rights in Data and Copyrights</a>	Research & development				
26.	<a href="#">Special DOL EEO clause for construction projects</a>				>\$10,000	
27.	<a href="#">Disadvantaged Business Enterprises (DBEs)</a>	All	All	All	All	All
28.	<a href="#">Recycled Products (Solid Wastes)</a>		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per
29.	<a href="#">ADA Access</a>	A&E	All	All	All	All
30.	<a href="#">Veterans Preference</a>				>\$150,000	
31.	<a href="#">Motor Carrier Safety</a>	All	All	All	All	All
32.	<a href="#">Seat Belt Use and Distracted Driving</a>	All	All	All	All	All
33.	<a href="#">Protection of Sensitive and Personally</a>	All	All	All	All	All

	CLAUSE	TYPE OF PROCUREMENT				
		Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction* (*See Note Below)	Materials & Supplies
	<u>Identifiable Information</u>					
34.	<u>Trafficking in Persons</u>	All	All	All	All	All
35.	<u>Tax Liability and Recent Felony Convictions</u>	All	All	All	All	All
36.	<u>Construction Site Safety</u>				all	
37.	<u>Domestic Preferences for Procurements</u>	All	All	All	All	All
38.	<u>Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment</u>	All	All	All	All	All
39.	<u>Bus Testing</u>			All, except minivans		
40.	<u>Pre-Award and Post-Delivery Audit Requirements</u>			All		
41.	<u>FTA Clauses Required when DBE threshold has been met</u>	If DBE threshold has been met	DBE threshold has been met	DBE threshold has been met	DBE threshold has been met	DBE threshold has been met
42.	<u>Conformance with ITS</u>	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects

	CLAUSE	TYPE OF PROCUREMENT				
		Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction* (*See Note Below)	Materials & Supplies
	<a href="#">National Architecture</a>					

## REQUIRED CLAUSES FOR FTA-ASSISTED CONTRACTS

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**These requirements do not apply to micro-purchases (\$10,000 or less), except that Davis-Bacon and Copeland Anti-Kickback Act requirements apply to contracts over \$2,000 for Construction, including Ferry Vessels.**

**Applicability data is found on the table above and with each clause below. Please review your specific funding source for additional applicability and requirements. Any updates to these clauses by the FTA not reflected here shall be considered in full force and effect.**

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### **1. No Federal Government Obligation to Third Parties.**

Authority - FTA Master Agreement (30) at Section 3(I)

Applicability - all contracts

Except as the Federal Government expressly consents in writing, the Authority and Contractor agrees that:

(1) The Federal Government does not and shall not have any commitment or liability related to the Contract, to any Contractor or Subcontractor at any tier, or to any other person or entity that is not a party (FTA or the Authority) to the Contract; and

(2) Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third Party Agreement at any tier that may affect the Contract, the Federal Government does not and shall not have any commitment or liability to any Third Party Participant or other entity or person that is not a party (FTA or the Authority) to the Contract.

Flow Down Requirements - This requirement flows down to all subcontracts at every tier.

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

Authority - 49 U.S.C. § 5323(l) (1), 31 U.S.C. §§ 3801-3812, 18 U.S.C. § 1001 and 49 CFR. Part 31, FTA Master Agreement (30) at Section 39(b).

Applicability - all contracts

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 CFR. 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.

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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

*Notification to FTA.* If a current or prospective legal matter that may affect the Federal Government emerges, the Authority must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Authority is located. The Authority must include a similar notification requirement in its Contracts that must require each Contractor to include an equivalent provision in its sub agreements at every tier, for any agreement that is a “covered transaction” according to 2 CFR §§180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a part to litigation or legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Contract, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

*Additional Notice to U.S. DOT Inspector General.* The Authority or Contractor must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Project is located, if the Authority or Contractor has knowledge of potential fraud, waste, or abuse occurring on any project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs regardless of whether the project is related to this Contract or another agreement between the Authority and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Authority. It also applies to subcontractors at any tier. “Knowledge,” as used in this paragraph, includes, but is not limited to, knowledge

of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Authority or Contractor. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Authority, including divisions tasked with law enforcement or investigatory functions.

The Contractor agrees to include the above 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.

Flow Down Requirements - The Program Fraud clause extends to all contractors and their subcontracts at every tier who make, present, or submit covered claims and statements.

### **3. Access to Records and Reports.**

Authority - 49 U.S.C. § 5325(g), 2 CFR. § 200.333 and 49 CFR. part 633, 49 CFR part 630, FTA Master Agreement (30) at Sections 8(c).

Applicability – all contracts

a. *Record Retention.* The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

b. *Retention Period.* The Contractor agrees to comply with the record retention requirements in accordance with 2 CFR. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. *Access to Records.* The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required. Contractor is notified that the Authority may be subject to the Single Audit Act, set forth in 2 CFR Part 200, Subpart F – Audit Requirements, as amended.

d. *Access to the Sites of Performance.* The Contractor agrees to permit FTA and its contractor’s access to the sites of performance under this contract as reasonably may be required.



e. *National Transit Database.* For each fiscal year the Authority receives or provides to any public transportation operation federal assistance appropriated or made available for 49 U.S.C. §5307 (including Passenger Ferry Grant Program) or any provision of 40 U.S.C. §5311:

(1) *Reporting Requirements:* The Authority agrees to, and assures that it will require any person that receives benefits directly from its Award (including the public transportation operators participating in its Award), the accompanying Contract, and any Amendments thereto:

(i) To facilitate compliance with 49 U.S.C. §5335(a), which authorizes the National Transit Database (NTD);

(ii) To conform to the NTD reporting system and the Uniform System of Accounts and Records;

(iii) To comply with FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 CFR Part 630;

(iv) To report when required to the NTD in accordance with FTA regulations 49 CFR Part 630, “National Transit Database,” and applicable FTA instructions:

(A) Any information relating to a transit asset inventory or condition assessment conducted by the Authority;

(B) Any data on assaults on transit workers of the Authority;

(C) Any data on fatalities that result from an impact with a bus; and

(D) Such other information as FTA may require; and

(v) To comply with another applicable reporting regulations, and requirements, and

(vi) To follow FTA guidance.

(2) *Voluntary Compliance.* FTA encourages any Authority that is not required to provide information for the NTD, to provide that information voluntarily.

Flow Down Requirements - This requirement flows down to all subcontracts at every tier.

#### **4. Federal Changes.**

Authority – 49 CFR Part 18

Applicability – all contracts

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 the Authority and FTA, Super Circular 2 CFR Part 200 and FTA Circular 4220.1F as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Flow Down Requirements - This requirement flows down to all subcontracts at every tier.

#### **5. Civil Rights (Title VI, EEO, ADA).**

Authority – Appendix II to Part 200, FTA Master Agreement (30 ) at Section 12(b)-(d), FTA Best Procurement Practices Manual

Applicability - all contracts

The JTA is an Equal Opportunity Employer. As such, the JTA agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the JTA agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination in Federal Public Transportation Programs.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will:

A. Prohibit discrimination based on race, color, religion, national origin, sex (including sexual orientation and gender identify), disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Prohibit the:

(i) Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332;

(ii) Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; or

(iii) Discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.

C. Follow the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

2. **Nondiscrimination – Title VI of the Civil Rights Act.** The Contractor will:

A. Prohibit discrimination based on race, color, or nation origin;

B. Comply with:

(i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.;

(ii) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and

(iii) Federal transit law, specifically 49 U.S.C. § 5332; and

C. Follow:

(i) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance;

(ii) U.S. DOJ, “Guidelines of the enforcement of Title VI, Civil Rights Act of 1964,” 28 CFR § 50.3; and

(iii) All other applicable federal guidance that may be issued.

3. **Equal Employment Opportunity.**

(1) *Federal Requirements and Guidance.* The Contractor agrees to prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and:

(i) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.;

(ii) Comply with Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.;

(iii) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs;

(iv) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement;

(v) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;” and

(vi) Follow other federal guidance pertaining to EEO laws, regulations, and requirements.

(2) *Specifics.* The Contractor agrees to:

(i) *Affirmative Action.* If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 CFR. chapter 60), take affirmative action that includes, but is not limited to:

(A) Recruitment advertising, recruitment, and employment;

(B) Rates of pay and other forms of compensation;

(C) Selection for training, including apprenticeship, and upgrading;  
and

(D) Transfers, demotions, layoffs, and terminations; but (ii) Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer;” and

(3) *Equal Employment Opportunity Requirements for Construction Activities.* Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:

(i) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR. chapter 60; and

(ii) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 CFR. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 CFR. Part 90, 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.

**4. Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Authority shall impose such contract sanctions as it, the FTA, FDOT or the U.S. DOT may determine to be appropriate, including, but not limited to: withholding of payments to the Contractor under the Contract until the Contractor complies and/or cancellation, termination or suspension of the Contract, in whole or in part.

Flow Down Requirements - This requirement flows down to all subcontracts at every tier. In all solicitations made by the Contractor and all subcontractors, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials

and leases of equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, age, disability, or family status and that these same obligations extend to any subcontractor, supplier or lessor.

## **6. Incorporation of Federal Transit Administration (FTA) Terms.**

Authority – FTA Master Agreement (30) at Section 3(i)(5)-(6)

Applicability - all contracts

All contractual provisions required by FTA, as set forth in FTA Circular 4220.1F and the Super Circular 2 CFR Part 200, 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 State requests, which would cause the State to be in violation of the FTA terms and conditions.

Federal requirements that apply to the Authority or the Award, the FTA Master Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirement, or guidance, or changes in the FTA Master Agreement including any information incorporated by reference and made part of that FTA Master Agreement and applicable changes to those federal requirements will apply to each Contract and parties thereto at any tier.

Flow Down Requirements - This requirement flows down to all subcontracts at every tier.

## **7. Energy Conservation.**

Authority - 42 U.S.C. 6321 et seq. and 49 CFR. Part 622, subpart C

Applicability - all contracts

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act, as amended, 42 U.S.C. § 6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, “Requirements for Energy Assessments,” 49 CFR. Part 622, subpart C.

Flow Down Requirements - This requirement flows down to all subcontracts at every tier.

## **8. Termination Provisions.**

Authority - 2 CFR. § 200.339 and 2 CFR. Part 200, Appendix II (B), FTA Master Agreement (30) Section 16(d)(2)

Applicability – all contracts

For all contracts in excess of \$10,000, termination provisions are referenced in Section IV. **Term of Contract and Termination** of the Contract under Section IV of this solicitation package. These termination provisions address termination for cause and for convenience by the non-federal entity and includes the manner by which it will be effected and the basis for settlement.

Flow Down Requirements – none.

**9. Government-Wide Debarment and Suspension.**

Authority - 2 CFR. Part 180, 2 CFR. § 180.300, 2 CFR Part 1200, 2 CFR. § 200.213, 2 CFR. Part 200 Appendix II (I), Executive Order 12549 and Executive Order 12689, FTA Master Agreement (30) at Section 4(h), FTA Best Procurement Practices Manual

Applicability - All contracts over \$25,000

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR. Part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” 2 CFR. Part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by the JTA. If it is later determined by the JTA that the bidder or Bidder knowingly rendered an erroneous certification, in addition to remedies available to the JTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or Bidder agrees to comply with the requirements of 2 CFR. Part 180, subpart C, as supplemented by 2 CFR. Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or Bidder further agrees to



include a provision requiring such compliance in its lower tier covered transactions.

Flow Down Requirements - Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 CFR. Part 180, as supplemented by 2 CFR. Part 1200; and (b) pass the requirement to comply with subpart C of 2 CFR. Part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

## **10. Buy America Requirements.**

Authority - 49 U.S.C. 5323(j) and 49 CFR. Part 661 (49 CFR. § 661.13(b) and 49 CFR. § 661.6), FTA Master Agreement (30) at Sections 3(h), 16(d)(1) and 15 (a)-(b), FTA Best Procurement Practices Manual

Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock valued at more than \$150,000. Work orders and small purchases of less than one hundred fifty thousand dollars (\$150,000.00) made with capital, operating, or planning funds are waived from Buy America requirements.

The Contractor agrees to comply with the domestic procurement requirements of 49 U.S.C. 5323(j), and FTA regulations, “Buy America Requirements,” 49 CFR Part 661, to the extent consistent with 40 U.S.C. § 5323(j), which provide that Federal funds may not be obligated unless all 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 CFR. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR. § 661.11.

The Bidder/Proposer must submit to JTA the appropriate Buy America certification below with its Bid(s) or Proposal(s). Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

The JTA presumes that any Contractor who submitted such certificate is complying with the Buy America provisions. A false certification is a criminal act in violation of 18 U.S.C. § 1001. A Contractor who certifies that it will comply with the applicable Buy America requirement is bound by its original certification (in the case of a sealed bidding procurement) or the certification it submitted with its final offer (in the case of a negotiated procurement) and is not permitted to change its certification after bid opening or submission of its final offer. Where a Contractor certifies that it will comply with Buy America requirements, the Contractor is not eligible for a waiver of those requirements. The JTA reserves the right to request additional information, and/or to conduct both pre-award and post-award audits to ensure that the Contractor is in compliance with Buy America requirements.

In addition to the aforementioned Buy America Requirements, the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58 that includes the Build America,



Buy America Act (“the Act”) Pub. L. No. 117-58, Div G, Title IX, §§ 70911-27 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Authority and Contractor acknowledges that this agreement is neither a waiver of §70914(a) nor a finding under § 70914(b). The Act, requires the following Buy America Act preference:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. All manufacturer products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufacturer product that are mined, produced or manufactured in the United States is greater than 55 percent (55%) of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established in applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States (IIJA §70912(2) and (6)(B)(ii)).

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

### *Definitions*

“Construction materials” include an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives – that is or consists primarily of:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Flow Down Requirements - 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.

## **11. Provisions for resolution of disputes, breaches, or other litigation.**

Authority – FTA Master Agreement (30) at Section 39(b).

Applicability – all contracts

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the Authority who must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Authority is located. The Authority must include a similar notification requirement in its Contractor Agreements and must require each Contractor to include a similar notification requirement in its sub agreements at every tier for any agreement that is a “covered transaction” according to 2 CFR. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

(3) Additional Notice to U.S. DOT Inspector General. The Authority must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief

Counsel or Regional Counsel for the Region in which the Authority is located, if the Authority has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. §3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Authority and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Authority. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Authority. In this paragraph, "promptly" mean to refer information without delay and without change. This notification provision applies to all divisions of the Authority, including division tasked with law enforcement or investigatory functions.

Flow Down Requirements - The Contractor must include a similar notification requirement in its subcontracts at every tier for any agreement that is a "covered transaction" according to 2 CFR. §§ 180.220 and 1200.220.

## **12. Lobbying Restrictions.**

Authority - 31 U.S.C. § 1352, 2 CFR. § 200.450, 2 CFR. Part 200 Appendix II (I) and 49 CFR. Part 20, Appendix A, FTA Master Agreement (30) at Section 4(c)

Applicability - All contracts over \$100,000

The Authority agrees that neither it nor any Contractor will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Contract, including any extension of modification, according to the following:

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 any lobbying with non-Federal funds that takes place in

connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

B. The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5). 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 clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

C. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Flow Down Requirements - The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

### **13. Clean Air**

Authority - 42 U.S.C. 7401–7671q and FTA Master Agreement (30) at Section 16(d)(7)

Applicability - All contracts over \$150,000

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

Flow Down Requirements - The Clean Air Act requirements flow down to all subcontracts over \$150,000 at every tier.

### **14. Clean Water.**

Authority - 33 U.S.C. 1251–1388, the Federal Water Pollution Control Act 33 U.S.C. 1251-1387, as amended, FTA Master Agreement (30) at Section 16(d)(7)

Applicability - All contracts over \$150,000

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

Flow Down Requirements - The Clean Water requirements flow down to all subcontracts over \$150,000 at every tier.

## **15. Cargo Preference - Use of United States-Flag Vessels.**

Authority - 46 U.S.C. § 55305 and 46 CFR. Part 381.7, FTA Master Agreement (30) at Section 15(c), FTA C 4220.1F at Appendix D

Applicability - Contracts involving equipment, materials or commodities which may be transported by ocean vessels.

Contractor shall: (a) use privately owned US-Flag commercial vessels to ship at least 50% 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 US flag commercial vessels; (b) furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); (c) include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

Flow Down Requirements - The Cargo Preference requirements flow down to all subcontracts involved with the transport of equipment, material, or commodities by ocean vessel.

## **16. Fly America.**

Authority - 49 U.S.C. § 40118, and 41 CFR. §§ 301-10, FTA Master Agreement (30) at Section 15(d), FTA C 4220.1F at Appendix D

Applicability - All contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S.

a) Definitions. As used in this clause--

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

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(End of statement)

e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

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.

**17. Davis-Bacon and Copeland Anti-Kickback Acts.**



Authority – Appendix II to Part 200, 49 U.S.C. § 5333(a), 40 U.S.C. §§ 3141 – 3148, 29 CFR. Part 5, 18 U.S.C. § 874, and 29 CFR. Part 5 (29 CFR. § 5.5), 29 CFR. § 3.1 and 3.11, 18 U.S.C. § 874, 40 U.S.C. § 3145, FTA Master Agreement (30) at Section 16(d)(4), FTA C 4220.1F at Appendix D

Applicability - Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000.

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR. Part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 CFR. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Contractor must report all suspected or reported violations to the federal awarding agency.

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 (write in the name of the Federal agency) 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.

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.

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.

Flow Down Requirements - These requirements extend to all third party contractors and their subcontracts at every tier and subrecipients and their subcontracts at every tier.

## **18. Contract Work Hours and Safety Standards Act**

Authority – Appendix II to Part 200, 40 U.S.C. §§ 3701-3708 and 29 CFR. Part 1926, FTA Master Agreement (30) at Section 16(d)(5), FTA C 4220.1F at Appendix D

Applicability - Contracts over \$100,000 that involve the employment of mechanics or laborers.

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3702-3704), as supplemented by the DOL regulations at 29 CFR. Part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 this clause 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 this clause.

The FTA 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 this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this agreement.

### **Contract Work Hours and Safety Standards for Awards Not Involving Construction**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR. Part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

Flow Down Requirements - This requirement flows down to all subcontracts at every tier.

## **19. Bonding.**

Authority - 2 CFR 200.325, FTA Master Agreement (30) at Section 16(n), FTA C 4220.1F at Appendix D

Applicability – For all FTA Funded construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold (currently \$250,000), the federal awarding agency may accept the bonding policy and requirements of JTA if the federal awarding agency has made a determination that the federal interest is adequately protected.

The Authority agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:

- (1) Construction. As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Contract that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.
- (2) Activities Not Involving Construction. For each Project or related activities implementing the Contract not involving construction, the Authority will not impose excessive bonding and will follow FTA guidance.

## **20. Seismic Safety.**

Authority - 42 U.S.C. 7701 et seq., 49 CFR. § 41.117 and Executive Order (E.O.) 12699, FTA C 4220.1F at Appendix D

Applicability – Design and construction of new buildings and additions to existing buildings.

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

Flow Down Requirements - 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.

## **21. Public Transportation Employee Protective Arrangements.**

Authority - 49 U.S.C. § 5333(b) (“13(c)”) and 29 CFR. Part 215, FTA Master Agreement (30) at Section 24(d)

Applicability - Each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

The Contractor agrees to comply with the following employee protective arrangements of

49 U.S.C. § 5333(b):

A. *U.S. DOL Certification.* Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307-5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provision of law as required by the Federal Government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide federal assistance for that Award. The Contractor agrees that the certification issued by U.S. DOL is a condition of the Contract and that the Contractor must comply with its terms and conditions.

B. *Special Warranty.* When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract, and the Contractor must comply with its terms and conditions.

C. *Special Arrangements for Contracts for Federal Assistance Authorized under 49 U.S.C. § 5310.* The Authority agrees, and assures that any Contractor providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, the former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to any Subrecipient participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

## **22. Charter Service Operations.**

Authority - 49 U.S.C. 5323(d), (g) and (r) and 49 CFR. Part 604, FTA Master Agreement (30) at Section 28

Applicability – all transit operations contracts involving FTA funding under 49 USC 5307, 5309, 5311 or 5316 funds

(a) *Prohibitions.* The Contractor agrees to not engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. 5323(d), (g) and (r), FTA regulations, “Charter Service,” and 49 CFR Part 604, any other federal Charter Service regulations, federal requirements, or federal guidance.

(b) *Exceptions.* Apart from exceptions to the Charter Service restrictions in FTA's Charter Service regulations, FTA has established the following additional exceptions to those restrictions:

(1) FTA's Charter Service restrictions do not apply to equipment or facilities supported with federal assistance appropriated or made available for 49 U.S.C. §5307 to support a Job Access and Reverse Commute (JARC) –type Project or related activities that would have been eligible for assistance under repealed 40 U.S.C. § 5316 in effect in Fiscal Year 2012 or a previous fiscal year, provided that the Authority uses that federal assistance for FTA program purposes only; and

(2) FTA's Charter Service restrictions do not apply to equipment or facilities supported with the federal assistance appropriated or made available for 49 U.S.C. § 5310 to support a New Freedom-type Project or related activities that would have been eligible for federal assistance under repealed 49 U.S.C. § 5317 in effect in Fiscal Year 2012 or a previous fiscal year, provided the Authority uses that federal assistance for FTA program purposes only.

(c) *Violations.* The Contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures and remedies, including withholding an amount of federal assistance as provided in FTA's Charter Service regulations, 49 CFR Part 604, appendix D, or barring it or any subcontractor from receiving federal assistance provided in 49 U.S.C. chapter 53, 23 U.S.C. § 133, or 23 U.S.C. § 142.

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

## **23. School Bus Operations.**

Authority - 49 U.S.C. 5323(f) and 49 CFR. Part 605, FTA Master Agreement (30) at Section 29

Applicability - Contracts for operating public transportation service.

(a) *Prohibitions.* The Contractor agrees to not engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. 5323(f) or (g), FTA regulations, "School Bus Operations," 49 CFR .Part 605, and any other applicable federal "School Bus Operations" laws, regulations, requirements, or applicable federal guidance

(b) *Violations.* If the Contractor has operated school bus service in violation of FTA's School Bus laws, regulations, or requirements, FTA may require the Authority or Contractor to take such remedial measures as FTA considers appropriate, or bar the Authority or Contractor from receiving federal transit assistance.

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

## **24. Substance Abuse – Alcohol Misuse and Prohibited Drug Use Requirements.**

Authority - 49 U.S.C. § 5331, 49 CFR. Part 655 and 49 CFR. Part 40.11(c), FTA Master Agreement (30) at Section 35, FTA C 4220.1F at Appendix D

Applicability – all transit operations contracts

Any Contractor that performs safety-sensitive functions must comply with Federal transit laws, specifically 409 U.S.C. § 5331, FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations” under 49 CFR. Part 655, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations” and applicable provisions of U.S. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 CFR Part 40. Under 49 CFR. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

- 1) Operating a revenue service vehicle, including when not in revenue service;
- 2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
- 3) Controlling dispatch or movement of a revenue service vehicle;
- 4) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;
- 5) Carrying a firearm for security purposes.

The Contractor agrees to comply with the following Federal substance abuse regulations:

- (A) Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 CFR. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 U.S.C. §§ 8103 et seq., and 2 CFR Part 182,
- (B) Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR Part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

The Contractor shall establish an anti-drug use and alcohol misuse program that includes the following:

- (A) A statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace, including the consequences associated with prohibited drug use and alcohol misuse. This policy statement shall include

all of the elements specified in §655.15. Each employer shall disseminate the policy consistent with the provisions of §655.16.

- (B) An education and training program which meets the requirements of §655.14.
- (C) A testing program, as described in Subparts C and D of this part, which meets the requirements of this part and 49 CFR Part 40.
- (D) Procedures for referring a covered employee who has a verified positive drug test result or an alcohol concentration of 0.04 or greater to a Substance Abuse Professional, consistent with 49 CFR Part 40.

Flow Down Requirements -The Substance Abuse requirements flow down to all Contractors at every tier who perform a safety-sensitive function for the JTA.

## **25. Patent and Rights in Data.**

Authority - 2 CFR. Part 200, Appendix II (F) and 37 CFR. §401.3, FTA Master Agreement (30) at Sections 17 and 18, FTA C 4220.1F at Appendix D

Applicability - 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 or to micro-purchases (less than \$3,500). If the federal award meets the definition of “funding agreement” under 37 CFR. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

### **Intellectual Property Rights**

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Authority intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 CFR. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the



Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA 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. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. 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 below. 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.

a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and

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

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract 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 the 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 this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees 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 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. 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.

4. 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.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. 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.

Flow Down Requirements - The Patent Rights and Rights in Data requirements flow down to all third party contractors and their contracts at every tier that meet the definition of a research-type project under 37 U.S.C. § 401.2.

**26. Special Department of Labor (DOL) EEO clause for Construction Projects.**

Authority - Executive Order 11246, 41 CFR § 60-1.4(b), FTA Master Agreement (30) at Section 12(d), FTA C 4220.1F at Appendix D

Applicability – Federal or federally assisted construction contracts and subcontracts in excess of \$10,000.

**Additional Equal Opportunity Clauses for Construction Contracts.**

The equal opportunity clause published at 41 CFR 60-1.4(a) and published at 41 CFR 601.4(b) in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319](#), 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR Part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” are incorporated herein by reference. In addition to those clauses, the following applies to all construction contracts in excess of \$10,000.

*(Full language follows):*

**Equal Opportunity Clause**

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every

subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Flow Down Requirements - The Special Department of Labor (DOL) EEO clause for Construction Projects requirements flow down to all third party contractors at every tier who perform a safety-sensitive function for the recipient or subrecipient.

## **27. Disadvantaged Business Enterprises (DBEs).**

Authority - 49 CFR. Part 26, 49 CFR. § 26.13(b), FTA Master Agreement (30) at Section 12e(4)(ii), FTA C 4220.1F at Appendix D

Applicability - all contracts

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 and with section 1101(b) of SAFETEA LU, 23 U.S.C. § 101.

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 FTA-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 JTA deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph. The successful Bidder/Offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

Flow Down Requirements - The DBE contracting requirements flow down to all third party contractors and their contracts at every tier. Note that it is the JTA's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the JTA to make sure it intervenes to monitor compliance. The onus for compliance is on the JTA.

## **28. Recycled Products (Solid Wastes).**

Authority - 42 U.S.C. § 6962, 40 CFR. Part 247, 2 CFR. Part § 200.323, FTA Best Procurement Practices Manual, FTA C 4220.1F at Appendix D

Applicability –All contracts over \$10,000 for items designated by the EPA Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

1. The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
2. The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products).

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR. Part 247.

Flow Down Requirements - These requirements flow down to all applicable subcontracts at all tiers.

## **29. ADA Access.**

Authority – 49 U.S.C. § 5301, 29U.S.C. § 794, 42 U.S.C. § 12101, FTA Master Agreement (30) at Section 12(h), FTA C 4220.1F at Appendix D-3.

Applicability – all contracts

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of sections 503 and 504 of the

Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following federal regulations, including any amendments thereto:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR. Part 38;

(4) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 40 CFR Part 39;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR. Part 35;

(6) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR. Part 36;

(7) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 CFR. Subpart 101-19;

(8) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR. Part 1630;

(9) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR. Part 64, Subpart F;

(10) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194;

(11) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR. Part 609;

(12) FTA Circular 4710.a, "Americans with Disabilities Act: Guidance," and

(13) Other applicable federal civil rights and nondiscrimination regulations and guidance; and

(14) Any implementing requirements FTA may issue.

Flow Down Requirements - This section applies to subcontractors at all tiers.

### **30. Veterans Preference.**

Authority – 49 USC § 5325(k), FTA Master Agreement (30) at Section 16(u)

Applicability – all contracts

To the extent practicable, the Contractor agrees it:

(1) Will give a hiring preference to veterans, as defined in 5 USC § 2108, who have the skills and abilities required to perform construction work required for a capital project supported with funds made available or appropriated for 49 USC chapter 53; and

(2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability or a former employee.

Flow Down Requirements – None.

### **31. Motor Carrier Safety**

Authority - FTA Master Agreement (30) at Section 33

Applicability - all contracts

Contractor agrees that it will comply with the applicable economic and insurance registration requirements of the:

(1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 CFR. Part 387, if it is engaged in operations requiring compliance with 49 CFR. Part 387, it is engaged in interstate commerce, and it is not within a defined commercial zone;

(2) The provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 CFR. Part 387, and reduce the amount of insurance the Authority must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311;

(3) The safety requirements of U.S. FMCSA regulations, “Federal Motor Carrier Safety Regulations,” 49 CFR. Parts 390 – 397, to the extent applicable; and

(4) The driver’s license requirements of U.S. FMCSA regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 CFR. Part 383, and “State Compliance with Commercial Driver’s License,” 49 CFR. Part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Controlled Substances and Alcohol Use and Testing,” 49 CFR. Part 382, and implementing federal guidance, to the extent applicable.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **32. Safe Operation of Motor Vehicles.**

Authority - FTA Master Agreement (30) at Section 34(a)(2) and (b)(3)

Applicability - all contracts

Contractor is to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or JTA.

Contractor is further to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Contractor is also to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **33. Protection of Sensitive and Personally Identifiable Information**

Authority - FTA Master Agreement (30) Section 36(c), US DOT Common Rules

Applicability - all contracts

Contractor must implement reasonable measures to safeguard protected personally identifiable information as well as any information that the FTA or pass-through entity designates as sensitive.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **34. Trafficking in Persons**

Authority - Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, per U.S. OMB’s direction, FTA Master Agreement (30) at Section 4(f)

Applicability - all contracts

Contractor agrees that it and its employees that participate in the Contract, may not:



Engage in severe forms of trafficking in persons during the period of time that the Contract is in effect;

Procure a commercial sex act during the period of time that the Contract is in effect;  
or

Use forced labor in the performance of the Contract or subagreements thereunder.

Violation of this provision provides JTA the right to unilaterally terminate the Contract.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **35. Federal Tax Liability and Recent Felony Convictions**

Authority - 2019 Pub. L 116-6; FTA Master Agreement (30) at Section 4(g), DOT Order 4200.6.

Applicability - all contracts

By submitting a bid or otherwise attempting to enter into a contract with the JTA, the undersigned Contractor certifies that it:

(A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **36. Construction Site Safety**

Authority - Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, 40 U.S.C. § 3701 et seq.; U.S. DOL regulations, “Recording and Reporting Occupational Injuries and Illnesses,” 29 CFR. Part 1904; “Occupational Safety and Health Standards,” 29 CFR. Part 1910; and “Safety and Health Regulations for Construction,” 29 CFR. Part 1926, and FTA Master Agreement (30) at Section 24a(4)

Applicability - all construction contracts

The Contractor agrees that it will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in the Project or related activities, including the: (i) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq.; and (ii) U.S. DOL regulations, “Recording and Reporting Occupational Injuries and Illnesses,” 29 CFR. Part 1904;

“Occupational Safety and Health Standards,” 29 CFR. Part 1910; and “Safety and Health Regulations for Construction,” 29 CFR Part 1926.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **37. Domestic Preferences for Procurements**

Authority - 2 CFR Part 200 Appendix II (L); 2 CFR. § 200.322

Applicability - all contracts

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all sub-awards including all contracts and purchase orders for work or products under this Contract.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **38. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

Authority - 2 CFR Part 200 Appendix II (K); 2 CFR. § 200.216

Applicability - all contracts

(a) The Authority and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security or government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company or Dahwa Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such



entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **39. Bus Testing.**

Authority - 49 U.S.C. § 5318(e) and 49 CFR. Part 665, FTA Master Agreement (30) at Section 16(m)

Applicability - Rolling stock, except minivans

Contractor shall comply with 49 U.S.C 5323 (Contract Requirements), 49 U.S.C. § 5323(j) (Buy America Requirements), 49 U.S.C. § 5323(m) (Pre-Award and Post Delivery Requirements), and 49 U.S.C. § 5318(e) (Bus Testing Requirements), 49 U.S.C. § 5323(u) (Limitation on Certain Rolling Stock Procurements), and their implementing regulations including the FTA's implementing regulation 49 CFR Part 665, to the extent they are consistent with 49 U.S.C. § 5318(e), as amended; 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 prior to the recipient's final acceptance of the first vehicle. (2) A manufacturer who releases a report under para. 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 the recipient's final acceptance of the first vehicle. If 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 US before Oct. 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.

Flow Down Requirements - none.

**40. Pre-Award and Post-Delivery Audit Requirements.**

Authority - 49 U.S.C. 5323(m) and 49 CFR. Part 663, FTA Master Agreement (30) at Section 16(m)

Applicability - Rolling stock

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 CFR .Part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR. Part 663 and related FTA guidance.

Flow Down Requirements – none.

**41. FTA Clauses Required when DBE Threshold Has Been Met**

Applicability – all contracts where there is DBE Participation

**a. Contract Assurance. 49 CFR Part 26.13**

The Contractor, subrecipient or subcontractor 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 26.13 in the award and administration of DOT-assisted contracts. 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 the Authority deems appropriate.

Flow Down Requirements - This requirement flows down to all subcontracts at every tier.

**b. Monitoring the Performance of other Program Participants. 49 CFR Part 26.37**

The JTA will monitor each DOT funded contract with DBE participation to ensure that all work committed to DBEs at contract award or subsequently (as a result of contract modification) is actually performed by the DBEs to which the work was committed. Site visit will be conducted periodically by staff. Contractors' Request for Payment forms will be monitored to ensure that DBEs are being paid in accordance to their signed agreements.

All Prime Contractors will be required to self-report all payments received from the JTA into the B2GNow (Contract Compliance Tracking System). This system tracks payments made to the prime contractor and all payments made by the prime to any subcontractors, to include DBEs, and the timeliness of those payments in accordance to JTA's Prompt Payment Clause.

Flow Down Requirements - This requirement flows down to all subcontracts at every tier.

**c. Prompt Payment.** 49 CFR Part 26.29(a)

Contractors are required to pay all subcontractors for satisfactory performance of their contracts within seven (7) business days from receipt of each payment from the JTA. Failure to comply may result in future withholdings of prime contractor's reimbursements and/or other sanctions until the prime contractor ensure all subcontractors are being promptly paid for all work performed.

Flow Down Requirements - This requirement flows down to all subcontracts at every tier.

**d. Return of Retainage.** 49 CFR Part 26.29(b), FY2019 FTA Procurement System Review Guide at P11.

Contractor is required to ensure prompt and full payment of retainage to all subcontractors within thirty (30) days) after the subcontractor's work is satisfactorily completed. Contractor is prohibited from holding retainage from subcontractors until the project is completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the JTA. When JTA has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Flow Down Requirements - This requirement flows down to all subcontracts at every tier.

**e. Termination for Convenience (DBE).** 49 CFR Part 26.53

No prime contractor will terminate for convenience a DBE subcontractor that was listed and agreed to perform a project task (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without prior written consent from JTA's Diversity & Equity Program Office.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the prime contractor obtains written consent from JTA's Diversity & Equity Program Office; and unless the consent is provided the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Appropriate administrative remedies will be invoked to any Prime Contractor that terminates and/or removes a DBE firm/s for convenience. Those remedies may include requirement to pay terminated DBE firm/s; withholding of future payments and/or retainage; and/or disbarment from future consideration of project awards with the JTA.

Flow Down Requirements - This requirement flows down to all subcontracts at every tier.

#### **42. Conformance with ITS National Architecture**

Authority - FTA Master Agreement (30) at Section 16(l), SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455

Applicability – Information Technology System (ITS) Projects

To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Flow Down Requirements - This requirement flows down to all subcontracts at every tier.

#### **Other Federal Requirements**

The following requirements are not federal clauses, but apply to all contracts except micro-purchases (\$10,000 or less)

##### **Full and Open Competition.**

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

##### **Notification of Federal Participation.**

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

##### **Interest of Members or Delegates to Congress.**

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

**Ineligible Contractors and Subcontractors.**

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

**Compliance with Federal Regulations.**

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as 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.

**Real Property.**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by FAST Act, 49 CFR Part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Access to Services for Persons with Limited English Proficiency.**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

**Environmental Justice.**

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low Income Populations," 62 Fed. Reg.

18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.

### **Environmental Protections.**

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.S.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

### **Geographic Information and Related Spatial Data.**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### **Geographic Restrictions.**

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposed to be amended in 2 CFR Part 1201).

### **In-State Bus Dealer Restrictions.**

The Recipient agrees that any state law requiring buses to be purchased through in-state dealers will not apply to purchases of vehicles supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, as provided in 49 U.S.C. § 5325(i).

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

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant’s objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.



**Project Labor Agreements.**

As a condition of a third party contract award, the Recipient may require the Third Party Contractor or Subcontractor to have an affiliation with a labor organization, such as a Project Labor Agreement, consistent with Executive Order No. 13502, “Use of Project Labor Agreements for Federal Construction Projects,” February 6, 2009 (74 Fed. Reg. 6985).

**Force Account.**

The Recipient agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.

**FTA Technical Review.**

The Recipient agrees that FTA may review and approve the Recipient’s technical specifications and requirements to the extent FTA believes necessary to ensure proper administration of the Underlying Agreement.

**Relationship of the Award to Third Party Contract Approval.**

The Recipient agrees that the terms of the Underlying Agreement do not, by themselves, constitute approval of any non- competitive third party contract associated with the Award, unless FTA indicates otherwise in writing.

**Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only.**

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal OMB Title 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” effective December 26, 2014 as applicable. Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Uniform Guidance. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted, whereby records must be available for review or audit by appropriate officials of the cognizant Federal agency and the U.S. Governmental Accountability Office (GAO). Non- Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity’s fiscal year, to the Florida Department of Transportation. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the Florida Department of Transportation’s Contract Audit Bureau, failure to comply with the requirements of the Uniform Guidance may result in suspension or termination of Federal award payments.

**Catalog of Federal Domestic Assistance (CFDA) Identification Number.**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

**CFDA number for the Federal Transportation Administration.**

Non-urbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Title 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (commonly known as Uniform Guidance) agrees to separately identify the expenditures for Federal awards on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Uniform Guidance.



**APPENDIX B**  
**REQUIRED REPRESENTATIONS AND CERTIFICATIONS**

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## **Certification of Eligibility**

\_\_\_\_\_ hereby certifies that it is not included on the lists of persons or firms currently debarred for any reason, including but not limited to violations of various public contracts incorporating labor standards provisions, maintained by the United States Comptroller General, the United States Department of Transportation, the Department of Transportation for Maryland, Virginia and the District of Columbia, the Washington Metrorail Safety Commission, the City of Washington, DC, or any other transportation agency of any state.

\_\_\_\_\_  
**Signature of Proposer's Authorized Representative**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
Typed/Printed Name

\_\_\_\_\_  
Title

## **Certification Regarding Lobbying Pursuant to 49 CFR Part 20 for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned Bidder certifies, to the best of his or her knowledge and belief that it complies with 31 USC §1352, as amended, 49 CFR Part 20, to the extent consistent with as necessary by 31 USC § 1352, as amended and all other applicable federal and state lobbying restrictions and specifically 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 state legislature, 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 state legislature, 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.

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

This certification is a material representation of fact upon which reliance 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 Bidder certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Bidder 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 Bidder's/Subcontractor's Authorized Official: \_\_\_\_\_

Printed Name of Bidder/Subcontractor: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

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

## **CONFIDENTIALITY AND NONDISCLOSURE TERMS**

1. Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. Additionally, "Confidential Information" shall also include any and all personal, protected or otherwise sensitive information which the Receiving Party might be exposed to during the day to day operations of the Disclosing Party.
2. Exclusions from Confidential Information. Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.
3. Obligations of Receiving Party. Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests it in writing.
4. Time Periods. The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as confidential or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.
5. Relationships. Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venturer or employee of the other party for any purpose.
6. Severability. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to effect the intent of the parties.
7. Integration. This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This Agreement may not be amended except in a writing signed by both parties.
8. Waiver. The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

(signature page follows)

This Agreement and each party's obligations shall be binding on the representatives, assigns, and successors of such party. Each party has signed this Agreement through its authorized representative.

**(Firm Name):**

By:\_\_\_\_\_

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

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

**WASHINGTON METRORAIL SAFETY COMMISSION:**

By:\_\_\_\_\_

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

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

### **Conflict of Interest Certification**

Proposers must execute either Section 1 or 2 to certify compliance with 2 CFR 200.112, FTA Circular C 4220.1F, VI, 2.a.(4)(h), and the FTA Master Agreement Section 4 (Ethics) hereinafter collectively the ("Conflict of Interest Regulations").

No Washington Metrorail Safety Commission ("WMSC") Board Member, employee, officer, agent or any immediate family member or partner thereof, of any of the above, or an organization which employs or is about to employ any of the above, that has a financial or other interest in the Proposer may participate in the selection for award or award funding or administer the Contract involving the Proposer. None of the above has received any gift from the Proposer. The Proposer shall obtain this certification from all subconsultant's and forward it to the WMSC if Section 2 has been completed by the subconsultant(s.)

#### **SECTION 1 – Conflict of Interest DOES NOT Exist**

The Proposer/Subconsultant acknowledges and understands the requirements of the Conflict of Interest Regulations and certifies that **no** real, apparent or potential conflict of interest exists.

Name of Proposer/Subconsultant: \_\_\_\_\_

Signature of Proposer's/Subconsultant's Authorized Official: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ FEI/EIN #: \_\_\_\_\_

#### **SECTION 2 – Conflict of Interest EXISTS**

The Proposer/Subconsultant acknowledges and understands the requirements of the Conflict of Interest Regulations and certifies that a real, apparent or potential conflicts of interest may exists and is hereby disclosed in full.

Printed Name of Proposer/Subconsultant: \_\_\_\_\_

Names of individuals and nature of their interest in Proposer/Subconsultant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Proposer's/Subconsultant's Authorized Official: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ FEI/EIN #: \_\_\_\_\_

## DBE / LSBE GOOD FAITH EFFORT FORM

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORT (GFE) FORM

**Proposer** should complete this form (and/or use as a guide) in its entirety and include with copies of the Proposer's good faith efforts supporting documentation in the bid/proposal packet on/before the advertised submittal date.

**1.** Contract Solicitation Number: \_\_\_\_\_ **1a.** DBE Contract Goal: \_\_\_\_\_%

**2.** Contract Description: \_\_\_\_\_

**3.** Proposer Name and Address: \_\_\_\_\_

**4.** Proposal Amount: \_\_\_\_\_ **4a.** Proposal Submittal Date: \_\_\_\_\_

**5.** Proposer's DBE/Goal Commitment on Contract: \_\_\_\_\_%

**GFE Factor Item 1.** List items of work the Proposer made available to DBE firms. For each item listed, show the dollar value and percentage of the total contract. The Proposer must demonstrate that sufficient work to meet the goal was made available to DBE firms. You may attach a spreadsheet of the information being requested in this factor.

Items of Work Made Available to DBEs	Item of work broken down into economically feasible units – Yes/No	Dollar Value of work	% of Total Bid

<b>Total</b>	<b>\$</b>	<b>%</b>
--------------	-----------	----------

**GFE Factor Item 2.** *List the names of certified DBEs/ and all the dates on which they were solicited to bid on this contract. Include the items of work offered and the dates and methods used for following up initial and follow-up solicitations. Attach copies of solicitations, e-mail messages, telephone records, fax confirmation, etc. You may attach a spreadsheet of the information being requested in this factor.*

[illegible]

**GFE Factor Item 3:** *For each item of work made available, indicate whether the Bidder provided plans and specifications specific to the items of work being offered, list the selected firm and its status as a DBE the DBEs that provided quotes, the price quote for each firm, and the price difference for each DBE/ if the selected firm is not a DBE. Provide copies of each DBE and Non-DBE quote submitted to the Bidder whenever a Non-DBE firm was selected over a DBE for work on the Contract. You may attach a spreadsheet of the information being requested in this factor.*

[illegible]



**GFE Factor Item 4.** *Describe the Proposer's efforts to solicit DBE quotes through advertisements. Provide copies of advertisement(s)*

Name of Publication	Dates of Publication

**GFE Factor Item 5:** Describe the Proposer's efforts made to assist interested DBEs in obtaining bonding, lines of credit, or insurance. Identify the DBEs who requested assistance and the type of assistance offered, and the dates. Provide copies of supporting documents on assistance provided. You may attach a spreadsheet of the information being requested in this factor.

[illegible]

**GFE Factor Item 6:** *“Describe the Proposer’s efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE purchases or leases from the prime contractor or its affiliate. Identify the DBE assisted, the type of assistance offered, and the dates. Provide copies of supporting documents. You may attach a spreadsheet of the information being requested in this factor.*

[illegible]

**GFE Factor Item 7:** List the names of agencies and the dates on which they were contacted to obtain assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing provide copies of supporting documents.

Name of Agency	Date of Contact

**GFE Factor Item 8:** Include additional information the Proposer wants the WMSC to consider that supports a demonstration of good faith effort.

<p style="text-align: center;"><b>Important</b></p> <p><b>IMPORTANT:</b></p> <p>Please include this completed form, and/or whatever form used, with copies of the Proposer's good faith efforts supporting documentation in the proposal packet on/before the advertised submittal date.</p> <p>Additional questions regarding the form completion and/or Good Faith Efforts can be emailed to <a href="mailto:procurement@wmsc.com">procurement@wmsc.com</a>.</p> <p>The Proposer is responsible to ensure the truthfulness, accuracy and completeness of the information contained in this form. Staff will verify all information provided as to its accuracy.</p> <p><b>Note: The sole intent of this GFE form is to serve as a guide in assisting Primes with what constitutes GFEs and what WMSC will be reviewing. It is not mandatory that this form be used – but it is considered a good guide.</b></p>	Preparer's Signature:
	Print Name of Preparer and Title:
	Date form completed:
	Telephone Number:

## LITIGATION DISCLOSURE FORM

Provide information, including case name, case number, court in which the case was filed, and a short description of the case regarding any litigation in which your firm, company or any individual who holds equity or is involved in the project is or has been a party to and took a position adverse to the WMSC.

CASE NAME	CASE NUMBER	COURT	DESCRIPTION

By:\_\_\_\_\_

For:\_\_\_\_\_

(Company Name)

\_\_\_\_\_  
Printed Name & Title of Signing Official

## **Non-Collusion Proposal Certification**

By submission of this proposal, each Proposal and each person signing on behalf of any Proposer certifies, and in the case of a joint proposal, each party certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

- I. The prices in the Proposal if any have been arrived at independently without collusion, consultation, communication or agreement, with any other Proposer or with any other competitor for the purpose of restricting competition as to any other matter relating to such prices.
- II. Unless otherwise required by law, the prices which have been noted in this Proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by Proposer prior to opening, directly or indirectly, to any other Proposer or to any competitor and,
- III. No attempt has been made or will be made by the Proposer to induce any other person, partnership, or corporation to submit or not to submit a Proposal for the purpose of restricting competition.

---

**Signature of Proposer's Authorized Representative**

---

**Date**

---

Typed/Printed Name

---

Title

## PAST EXPERIENCE/PERFORMANCE REFERENCE INFORMATION FORM **Instructions:**

Instructions: Provide a minimum of three (3) references. Provide information requested in sections 1 through 14. Form must be filled out completely and signed by the Proposer.

1. Complete name of Government agency, commercial firm, or other organization	
2. Complete address	
3. Contract number or other reference	4. Date of contract
5. Date work was begun	6. Date work was completed
7. Estimated contract price	8. Final amount invoiced or amount invoiced to date
9. Technical point of contact (name, title, address, telephone no. and email address)	10. Location of work (country, state or province, county, city)
11. Description of contract work (Describe the nature and scope of the experience and provide an explanation of how the work is the same or similar to the work required by JTA). Attach an explanation of any performance problems or other conflicts with the customer. Use a continuation sheet, if necessary.)	
12. Current status of contract:	
13. Signature of Proposer	14. Print Name of Proposer

## APPENDIX C

### HUMAN RESOURCE GENERALIST SERVICES EVALUATION FORM

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

#### 1. Mandatory Elements

Proposers and submitted candidates that do not meet the mandatory qualifications will be eliminated from further consideration. These are considered essential qualifications which cannot be overcome by other considerations or credentials:

- a. The candidate holds a bachelor's degree or higher in Human Resource Management, Business or other related field of study.
- b. The candidate demonstrates a minimum of 5 years practical Human Resource Management experience with the desired education or demonstrates a minimum of 10 years practical Human Resource Management experience without the desired education.
- c. The candidate has no conflict of interest with regard to any other work performed for the WMSC
- d. The Proposer adhered to the instructions in this Request for Quotation on preparing and submitting the quotation
- e. The Proposer has a record of quality HR work

#### 2. Technical Qualifications

The technical qualification criteria are weighted and can only be scored within the scoring range specified. No vendor submittal can receive a score in any criteria segment that is above the maximum numeric score allotted for that segment.

**a. Qualification, Education, Experience & Availability of Candidate (65 Points)** \_\_\_\_\_

**b. Methodology and Work Plan (20 Points)** \_\_\_\_\_

**c. Quality Assurance and Quality Control (15 Points)** \_\_\_\_\_

**Total Score (Max 100 Points)** \_\_\_\_\_

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_