



**LKLP**  
Community  
Action

## Invitation for Bids

### Perry & Leslie Transit HVAC Replacement

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#### Summary

LKLP CAC, Inc. is seeking bids from qualified vendors to provide and install HVAC replacement units at the LKLP Perry Transit Building located at 398 Roy Campbell Drive Hazard, KY and the Leslie Transit Building located at 121 Maple Street Hyden, KY.

#### Scope of Work and Requirements

- General Scope:
  - Safe plan of action communicated to site contact before work begins.
  - Provide materials and tools necessary to carryout HVAC replacement.
  - Clean up work and inform site contact on job completion.

#### Site Tour

Bidders will be given the opportunity to inspect the properties and view the current HVAC setup to make an accurate estimate of cost. Please contact Darrell Grigsby at [d.grigsby@lkpl.net](mailto:d.grigsby@lkpl.net) or 606-216-7461 to schedule a site visit before submitting a bid. Site tours are not mandatory but recommended.

All bid forms, information, and specifications regarding this bid are available from LKLP. Bidders must submit their bids in a sealed envelope, and the bidder is advised to clearly mark the sealed bid with the bid number and description, opening time and date listed above. LKLP is not responsible for the premature opening of, or the failure to open, a sealed bid not properly addressed or identified.

This bid package is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participations of Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The bid package is subject to a financial assistance between LKLP, the Kentucky Transportation Cabinets Office of Delivery, and the Federal Transit Administration.

LKLP adheres to the provisions of KRS 45A.455, paragraphs (1) through (5) relative to conflicts of interests, gratuities, kickbacks, and use of confidential information in all bid offerings.

#### Bid Timeline

Please submit a complete bid to LKLP, two paper copies in a sealed envelope labeled "Perry & Leslie Transit HVAC Replacement Bid", on or before 3:00PM EST on Monday, January 20, 2025. The bids should either be mailed or delivered in person during the LKLP's business hours. If delivering in person, please call 606- 438-0838 and deliver to the main office at 398 Roy Campbell Drive. If mailed, please mail to:

LKLP CAC, Inc.  
Attn: Cena Whitaker  
398 Roy Campbell Drive  
Hazard, KY 41701

### **Submission Timeline**

- LKLP issues IFB: December 30, 2024
- Site tours: January 2 – 15, 2025
- Deadline for submitting questions: January 15, 2025 3:00PM
- Deadline for submitting bids: January 20, 2025 at 3:00PM
- Bid opening: January 21, 2025 at 9:00AM
- Project Completion: No later than March 28, 2025

If a contractor has any questions about the contents of this IFB, or about any matters relating to it, the question must be directed in writing to the Chief Financial Officer, Cena Whitaker, via email at [cena.whitaker@lklp.net](mailto:cena.whitaker@lklp.net) no later than January 15, 2025. All questions will be responded to promptly via email and posted on [www.lklp.org](http://www.lklp.org). Changes and addendums will also be emailed to all known possible bidders based on the return of "Confirmation of Receipt".

### **Submission Checklist**

Bidders should complete all of the items on the checklist to be considered eligible for selection. LKLP will choose the vendor based on the selection criteria listed above.

- ✓ Submit the bid on or before 3pm 01/20/2025
- ✓ Submit two paper copies
- ✓ Required materials are specified and included in bid price
- ✓ Include a description of experience
- ✓ Include an overview of the company
- ✓ Include an outline of pricing, payment terms, and sample contract
- ✓ Include a timeline/project schedule (with project completion date before 03/28/2025)
- ✓ Include a certificate of insurance
- ✓ Include signed Federal Model Clauses
- ✓ Include proof of active registration status on sam.gov
- ✓ Include signed Appendices A, B, C, D & E

### **Disclaimer**

This Invitation for Bids (IFB) is not an offer to purchase. The IFB is solely a request for expressions of interest and statements of qualifications. It is not an invitation for tenders, an offer to contract, or an invitation for offers capable of acceptance to create a contract. No contractual or other legal obligations or relations between LKLP and any other person can or will be created hereunder. LKLP assumes no financial responsibility for the cost of preparation of bids by respondents nor does it make any commitment to enter into a contract for service based on responses to this IFB.

## Confirmation of Receipt

**\*\*\* Please send this Confirmation of Receipt as soon as possible \*\*\***

**Bidder must return this "Confirmation of Receipt" as soon as possible to receive possible addendums and to properly document questions/answers pertaining to this IFB.**

**IFB: Perry & Leslie Transit HVAC Replacement**

<b>Company Name:</b>		<b>Phone Number:</b>	
<b>Address:</b>			
<b>City/State:</b>		<b>Email:</b>	
<b>Print Name:</b>		<b>Fax Number:</b>	
<b>Signature:</b>		<b>Date:</b>	

## Instructions to Bidders

### Bid Identification

Bidders must submit their bid in a sealed envelope and have on the outside Bid or Quotation Number, Opening Time, and Date. This instruction is provided as a means to ensure proper delivery, handling, and public announcement of a bidder's response at the official bid opening date, and time. No responsibility will attach to LKLP for a premature opening of or failure to open a bid not properly addressed or identified. Bids in the form of emails or facsimiles will also be accepted.

The following must be included in the bid for the bid to be considered:

Appendix A

Appendix B

Appendix C (with supporting documentation)

Appendix D

Appendix E (Completed and signed Federal Model Clauses at the appropriate places)

### Bid Submission

Each bid shall be signed and submitted with the understanding that the bid is firm for 120 days immediately following the date of opening of the bids. Bidders must be submitted on the attached form and signed in ink by an authorized individual of the company or corporation. At the end of the 120 day period, the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn, it will remain in effect until an award is made or the bid offering is canceled. Responses received after the deadline will not be considered. Each bidder shall also sign and submit with the bid the attached Contract Agreement.

### Acceptance of Bids

LKLP reserves the right to accept any bid or to reject any and all bids on such basis as LKLP deems to be in its best interest, subject to applicable Federal and State laws and regulation, which require the purchaser to award to the lowest bid received. Awards shall be made only to responsible bidders that possess the potential ability to perform successfully under the terms and conditions of this procurement.

### Assignment Clause

The Kentucky Transportation Cabinet/Office of Transportation Delivery must provide written approval for assignments to any part of this agreement or project.

### Bid Retraction

Bidders are advised that bids submitted, as part of this bid offering may not be withdrawn for a minimum of 120 days following the public bid opening unless circumstances justify consideration by the Chief Financial Officer of a release from this provision. Requests to withdraw a bid must be in writing and received by LKLP within twenty-four hours of the public bid opening.

### Sales Tax

If this bid is for the purchase and installation of materials or equipment, and if you are a contractor as defined in 103 KAR 26:070(2) and required to pay sales tax on materials or equipment purchased by you from suppliers, then the sales tax you have paid should be included as part of your bid price.

If this bid is for the direct sale of materials or equipment to LKLP, and if you are a retailer or hold a valid resale certificate issued by the State of Kentucky, then the bid price should not include any sales tax.

### **Late Submissions**

See general terms and conditions.

### **Geographical Preference**

No Geographical Preference is set for this project.

### **Materials**

All materials purchased and delivered by the bidder shall meet LKLP specifications, including amendments and revisions, hereto issued prior to the date of this invitation.

### **Completion/Delivery Schedule**

The delivery shall be made within 120 days of bid award. If delivery/installation has not been made within 120 days after bid award, a credit of \$10 per day will be assessed against the total due.

### **Pre- Bid Meeting**

No Pre- Bid meeting will be held at this time.

### **Questions and Addenda**

This bid is offered by LKLP. Bidders shall carefully examine this bid and any addenda issued by LKLP. Bidders shall seek clarification of any ambiguity, conflict, omission, or other error in this bid “in writing.” Oral comments or communications do not form any part of this bid offering. Questions should be addressed to [cena.whitaker@lklp.net](mailto:cena.whitaker@lklp.net) in writing no later than November 25, 2024. If the answer materially affects this procurement, the information will be issued in an addendum no later than November 26, 2024. Addendums and question responses will be posted on LKLP web page at [www.lklp.org](http://www.lklp.org) and correspondence will be sent to all bidders that submitted a “Confirmation of Receipt” via email. Written communications should be addressed as follows:

LKLP  
Attn: Cena Whitaker  
398 Roy Campbell Dr.  
Hazard, KY 41701  
E-mail: [cena.whitaker@lklp.net](mailto:cena.whitaker@lklp.net)

### **Retention of Records**

The successful bidder shall be required to maintain, for a period of five (5) years from the date of final payment to the bidder, all books and records pertaining to this bid offering. KYTC has access to these records.

### **Conflicts, Gratuities, and Kickbacks Prohibited**

LKLP adheres to the provisions of KRS 45A.455, paragraphs (1) through (5) relative to conflicts of interests, gratuities, kickbacks, and use of confidential information in all bid offerings.

## **Cost Incurred in Responding**

This bid offering does not commit LKLP to pay any costs incurred in the preparation and submission of bids or in making necessary studies or designs, nor does it commit LKLP to enter into a contract.

## **Disposition of Bids**

All materials submitted in response to this bid offering will become the property of LKP. One (1) copy of each bid shall be retained for the official files and will become a public record after an award is made by LKLP, and thus open for public inspection. It is understood that the bid will become a part of the official file without obligation on the part of LKP.

## **Insurance Requirements**

The successful bidder agrees to provide LKLP with a copy of a certificate of insurance indicating that its employees are covered by Workers Compensation insurance and a copy of a certificate of insurance indicating that it has Automobile and Vehicle Liability Insurance with limits of at least:

Worker's compensation as required by the State of Kentucky Comprehensive automobile and vehicle insurance covering operation of owned, hired, and non-owned vehicles in the following amounts:

Bodily Injury  
\$500,000 per person  
\$1,000,000 per occurrence

Property Damage  
\$1,000,000 per occurrence

## **Disclosure**

In compliance with Kentucky Revised Statutes, Chapter 45A, and the Kentucky Open Records Act, trade secrets or proprietary information submitted by a bidder in connection with this procurement shall not be subject to public disclosure. However, the bidder must invoke this protection prior to or upon submission of the data or other material and must identify the specific area or scope of data or other materials to be protected and state the reasons why protection is necessary.

## **Prime Bidder Responsibilities**

If the bidder's response includes goods and services provided by others, the bidder will be required to act as the prime contractor for all such items and must assume full responsibility for the procurement, delivery, and quality of such goods and services. The bidder will be considered the sole point of contact with regard to all stipulations, including payment of all charges and the meeting of all contractual requirements resulting from this bid offering.

## **Inquiries and Additional Information**

Change orders are strongly discouraged. However, at times, a change in work may be required. All changes in work and/or change orders must have the prior review and approval of the Office of Transportation Delivery/KYTC. Any questions may be referred to Cena Whitaker at [cena.whitaker@lklp.net](mailto:cena.whitaker@lklp.net).

## **Disabilities Act**

This project must be in compliance with the American Disabilities Act Accessibility Guidelines (ADAAG) and the Transportation ADA regulations, 49 CFR part 37.

## **Sam.gov**

The contractor shall provide proof of active registration status on Sam.gov before awarded the contract.

## **Disadvantaged Business Enterprise (DBE) and Small Business**

LKLP hereby notifies all bidders that in consideration and award that minority or disadvantaged business enterprise will be afforded an opportunity to participate in response to this advertisement and will not be discriminated against on the grounds of race, sex, creed, religion, color, national origin, age, disability, or veteran status.

### DBE Bid Opportunity list language:

Award of this contract is conditioned on submission of the following accompanying the sealed bid.

1. Names and addresses of DBE firms that will participate in the contract
2. A description of work each DBE will perform.
3. The dollar amount of the participation of each DBE firm participating.
4. Written documentation of the bidder's commitments to use a DBE subcontractor whose participation it submits to meet the contract goals.
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and, If the contract goal is not met, evidence of good faith efforts to do so. (Examples found in Appendix A of 49 CFR Part 26). The contractor must notify the Purchaser whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform work through its own forces or those of an affiliate without prior written consent of the Purchaser and KYTC.

### DBE Prompt Payment Clause:

1. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work performed. In addition, the contractor may not hold retainage from its subcontractors it is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily complete.
2. ADA Guidelines: This project must be in compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Transportation ADA regulations as referenced in 49 CFR Part 37.

3. Equal Opportunity/Affirmation Action employer and is a Drug free Work Place: LKLP is an equal opportunity/affirmative action employer and is a zero tolerance work place.

#### Small Business Clause:

In regard to the arrangement of the solicitation, times for the bid opening, delivery schedules, etc. These will be made in a manner to facilitate participation by Small Business Concern. The definition, size standards, and average gross receipts of small business are found in 13 CFR Part 121.

NOTE: For access to specific sections of CODE OF FEDERAL REGULATIONS 13-CFR PART 121

- (a) SBA's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for "small business" concerns. Size standards have been established for types of economic activity, or industry, generally under North American Industry Classification System (NAICS).
- (b) NAICS is described in North American Industry Classification Manual-United States, which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; by calling 1(800)553-6846 or 1(703)605-6000; or via the Internet at <http://www.ntis.gov/products/naics.aspx>. The manual showing relationship between 1997 NAICS and 1987 SICs, and a comprehensive index. NAICS assigns codes to all economic activity within twenty broad sectors. Section 121.201 provides a full table of small business size standards matched to U.S. NAICS industry codes. A full table matching a size standard with each NAICS Industry or U.S. Industry code is also published annually by SBA in the FEDERAL REGISTER. 65R 30840, May 15, 2000, as amended at 67 FR 52602. Aug 13, 2002, 74 FR 46313, Sept. 9, 2009.

#### **Non-Discrimination**

The contractor, sub-recipient, 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 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 recipient deems appropriate.

#### **ADA Guidelines**

This project will be in compliance with the Americans with Disabilities Guidelines (ADAAG) and the Transportation ADA regulations, 49 CFR Part 37.

#### **Site Visits**

Authorized representatives of the KYTC/Office of Transportation Delivery have the right to visit the site at intervals to protect the State and Federal interest and determine compliance with the State and Federal regulations.



## **Brand Names/Salient Characteristics Clause**

In accordance with the USDOT/FTA requirements, brand names or equal descriptions are used as a means to define the performance or other salient characteristics of procurements. Even if the phrase or approved equal is inadvertently omitted, it is implied after any brand name.

## **Termination for Lack of Funds**

The purchaser may terminate this contract, or any part of it, because of non-availability to the purchaser of funds required under the terms of this contract, by serving notice of termination upon the contractor. In such event, the contractor shall be paid its costs, including contract close out costs and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to the purchaser to be paid to the contractor.

## **Exceptions**

Some exceptions may be approved with prior approval from LKLP and Kentucky Transportation Office of Transportation Delivery. All bidders will be aware of such approval via the addendum to the bid. All exceptions must be approved two (2) days prior to the close of the bid.

## **General Terms and Conditions**

### **Applicable laws and regulation**

The bidder's attention is directed to the fact that all applicable Laws of the Commonwealth of Kentucky, Federal law, rules of Federal Transit Administration, Municipal Ordinances and the rules and regulations of LKLP shall apply to this invitation and contractual documents that may result with award of this invitation. Any litigation with respect thereto shall be brought in the courts of the Commonwealth of Kentucky and Kentucky Law shall govern.

## **Exceptions**

Bidders taking exceptions to any part or section of the invitation shall indicate such exceptions on the bid form. Failure to indicate any such exception will be interpreted as the bidder's intent to comply fully with the requirements as written. Conditional or qualified bids, unless specifically allowed, shall be subject to rejection in whole or in part.

## **Oral Statements**

No oral statement shall modify or otherwise affect the terms, conditions, or specifications stated in the invitation or ensuing contract. Any Modifications to the invitations must be signed by LKLP. Any modifications to the contract must be signed by both parties to the contract.

## **Bid Acceptance Period**

Any bid submitted as a result of the solicitation shall be binding on the bidder for a period of 120 calendar days following the opening date. Any quote for which the bidder specifies a shorter acceptance period may be rejected.

## **Bid Distribution**

The bid shall be made out in two (2) copies and returned per instructions in preamble.

## Questions on Bid Documents

All matters, regardless of the nature, regarding this bid invitation shall be submitted to LKLP 398 Roy Campbell Dr., Hazard, KY 41701 or via email [cena.whitaker@lklp.net](mailto:cena.whitaker@lklp.net).

## Ethics in Public Contracting

The bidder certifies that the bid was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor in connection with the bid; and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value.

## Late Submissions

A bid received at the place designated in the invitation for the receipt of bids after the exact time specified for receipt will not be considered unless it is the only bid received or it is received before award is made and was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids. Otherwise, to be considered, LKLP must determine that the late bids was due solely to mishandling by LKLP after receipt at the specified address.

## Informalities and Irregularities

LKLP has the right to waive minor defects or variations of a quote from the exact requirements of the specifications that do not affect the price, quality, quantity, delivery, or performance time of the services being procured. If insufficient information is submitted by a bidder (with the bid) for LKLP to properly evaluate the bid, LKLP has the right to require submittal of such additional information as it may deem necessary after the time set for receipt of quotes, provided that the information requested does not change the price, quality, quantity, delivery, or performance time of the services being procured.

## Indemnification

The successful bidder covenants to save, defend, keep harmless, and indemnify LKLP and all of its officers, departments, agencies agents, and employees as well as KYTC from and against all claims, loss damage, injury, fines penalties, and cost - including court costs and attorney's fees, charges, liability, and exposure, however caused - resulting from, arising out of, or in any way connected with the bidder's negligent or willfully negligent performance or nonperformance of the terms of the contract.

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

## Termination

The performance of work under the contract may be terminated by LKLP in whole or in part whenever LKLP determines that the termination is in the best interest of LKLP. Any such termination shall be affected by the delivery to the contractor of a written notice of termination at least fifteen (15) days before the date of the termination, specifying the extent to which performance of the work under contract is terminated.

## **Drawings, Sketches, and Technical Data Information**

Bidders are required to submit any and all technical data necessary to support its bid. Additional generic literature on the item bid, i.e., marketing, sales and so forth may also be submitted.

## **Warranties of Quality**

Bidders warrants that the goods and services provided pursuant to the Bid Specification shall conform to all affirmations of fact or promises made by bidder, descriptions, samples, and specifications. If services or work is to be provided under the contract, such services or work shall be completed in a good and workmanlike manner. In addition, bidder warrants that said goods and services are merchantable and are fit for the ordinary purposes for which such goods and services are used. In the event of a breach of any of the foregoing warranties, bidder shall expeditiously as that term is defined by LKLP, and at its own expense but at the sole option of LKLP, repair or replace the goods and services to comply with said warranties. The foregoing warranties shall apply to any and all repaired or replacement.

## **Veterans Clause**

Equal Opportunity for Veterans (Jun 2020)

(a) Definitions. As used in this clause - "Active-duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.

(b) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

## **Additional Clauses Incorporated by Reference**

OSHA 1970 (Public law 91-596) Safety Standards and Accident Prevention

KRS 45.610

KRS 45.620

KRS 45.630

KRS 45.640

## **Warranties of Title**

Bidder warrants that it has title to and the proprietary right to provide the goods pursuant to the contract. Bidder shall at its own expense either defend or settle with the prior approval of LKLP, any suit, claim or action against LKLP based on an allegation that the goods or the use thereof constitutes

a patent, copyright, trade secret or other intellectual property right infringement. Bidder shall pay all amounts assessed against LKLP in any suit, claim or action and shall reimburse LKLP for any damages, direct or consequential, incurred as a result of such suit, claim or action including LKLP's attorney's fees, court costs and expenses incurred by participating in the defense or settlement thereof. In the event the goods are held to constitute an infringement in such suit, claim or action or their continued use is enjoined, Bidder shall at its own expense and at the option of LKLP, either:

- a) procure for LKLP the right to continue using the goods
- b) replace the goods with equivalent non-infringing goods which are acceptable to LKLP
- c) modify the goods in a manner which is acceptable to LKLP, so they become noninfringing.

### **Non-Waiver of Rights**

No delay or omission by LKLP to exercise any right in the contract at law or in equity shall constitute a waiver of such right or any other right in the contract, at law or in equity.

### **Warranty of Price**

Bidders warrants that the prices for the goods provided to LKLP pursuant to the contract are not less favorable than those prices currently in effect with other customers of Supplier for the same or similar goods in similar quantities. In the event that Bidder reduces its prices for such goods within ninety (90) days of the execution of the contract by both parties. Supplier shall reduce the prices in the contract to the reduced price. Bidder warrants that the prices in the contract shall be complete and no additional charges of any type, including but not limited to shipping, packaging, labeling, custom duties, storage, insurance, boxing, and crating, shall be added without the prior written consent of LKLP.

### **Setoff**

All claims for money due or to become due from LKLP shall be subject to deduction or set off by LKLP by reason of any counterclaim or cross claim arising out of this or any other transaction with Supplier.

### **Compliance with Laws**

The successful bidder shall comply with all applicable federal, state and local laws, rules, ordinances and regulations, Presidential directives and executive orders that are or may in the future become applicable to the successful bidder or the subject matter of the contract, including but not limited to laws and regulations concerning OSHA, and all such applicable federal, state and local laws, rules, ordinances and regulations, Presidential directives and executive orders are hereby incorporated herein by this reference.

### **Certification of No- Bid-Rigging**

Bidder certifies to LKLP that Bidder has not combined or conspired with any other person to reduce or eliminate competition in the bid of the contract, the effects of which would constitute an unreasonable restraint of trade or commerce.

### **Merger Clause**

This contract, including any exhibits or documents incorporated herein by reference, constitutes the final written expression of all the terms and conditions of the contract between Bidder and LKLP and is a complete and exclusive statement of those terms and conditions and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the subject matter of the contract, except those representations relating to warranties of quality. This contract

may only be modified in writing signed by LKLP.

## **Payment Dispute**

A Claim is a demand, or assertion, by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term Claim also includes other disputes and matters in question between LKLP and the Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the claim. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial (or other) Arbitration Rules, and judgment on the award rendered by the arbitrator (w) may be entered in any court having jurisdiction thereof.

## **Mediation**

Claims, disputes, or other matters in question between the parties to this Contract shall be first subject to pre-suit mediation prior to the filing of any legal claims or litigation. Pre-suit mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of this Contract. Unless otherwise agreed in writing, the Bidder shall carry on the Work and maintain its progress during any mediation or litigation, and LKP shall continue to make payments to the Bidder in accordance with the Contract Documents.

Either party may initiate a mediation proceeding by submitting, a request in writing to the other party within a reasonable time after the claim, dispute or other matter in question has arisen, but in no event after the applicable statute of limitations has expired.

The parties shall endeavor in good faith to mutually agree upon an acceptable mediator. In the event the parties have not agreed upon a mediator within 30 days of the request for mediation, LKLP shall select a mediator. Each party is to bear its own fees, costs, and expenses of said mediation.

In the event that mediation is unsuccessful, all claims, disputes or other matters in question shall be resolved in the Circuit or District Courts of the Commonwealth of KY located in Perry County, Kentucky.

## **Litigation**

In the event legal action is brought against LKLP or the Bidder against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs and expenses incurred in that action from the non-prevailing party.

## **Payment**

LKLP will remit payment within 30 days of satisfactory project completion.

## Bid Specifications

The following specifications must be followed to complete HVAC replacement at the **Perry Transit Building** located at 398 Roy Campbell Drive, Hazard, KY.

- ◆ Safe plan of action with site contact before work begins.
- ◆ Recover refrigerant from existing split system units Per EPA requirement and dispose of properly.
- ◆ Disconnect the power from the existing unit.
- ◆ Provide crane for setting of new HVAC equipment and removal of existing equipment.
- ◆ Schedule and coordinate with owners/crane contractor to perform crane lift of equipment.
- ◆ Remove existing equipment from job site and dispose of equipment.
- ◆ Coordinate with LKLP Maintenance staff on removal of drop ceiling grid/tiles as needed to facilitate replacement of equipment.
- ◆ Coordinate with LKLP Maintenance/Site Contact on phasing of removal/replacement of HVAC equipment to prevent extended downtime in large areas of building.
- ◆ Provide and install (5) 2 Ton, (6) 3 Ton, (2) 4 Ton, (2) 5 Ton Split System Heat Pump Condenser units.
- ◆ Provide and install (5) 2 Ton, (6) 3 Ton, (2) 4 Ton, (2) 5 Ton Split System Air Handler Units w/Electric Aux Heater Packages.
- ◆ HVAC Equipment to be A2L Refrigerant if available.
- ◆ Flush, pressurize, and verify no leaks are present on existing refrigerant line sets. (Repair as needed)
- ◆ Reconnect to existing line sets. (Modify connections as needed)
- ◆ Reconnect units to existing supply/return ductwork. (Modify initial take offs as needed to match replacement unit)
- ◆ Reconnect units to existing power and control wiring.
- ◆ Reconnect to existing condensate drain piping. (Modify initial take offs as needed to match replacement unit)
- ◆ Provide and install (15) auxiliary drain pans and reconnect to existing overflow drain piping.
- ◆ Mount AHU's and ODU's to existing mounting structures. (Modify as needed to accommodate replacement equipment)
- ◆ Provide and install (15) digital BACnet or similar thermostats.
- ◆ Perform startup of HVAC equipment and training of essential site staff on unit operation.

The following specifications must be followed to complete HVAC replacement at the **Leslie Transit Building** located at 121 Maple Street, Hyden, KY.

- ◆ Safe plan of action with site contact before work begins.
- ◆ Recover refrigerant from existing split system units Per EPA requirement and dispose of properly.
- ◆ Disconnect the power from the existing unit.
- ◆ Remove existing equipment from job site and dispose of equipment.
- ◆ Provide crane for setting of new HVAC equipment and removal of existing equipment.
- ◆ Coordinate with site staff and crane contractor for removal/installation of ODU's.
- ◆ Coordinate with LKLP Maintenance/Site Contact on phasing of removal/replacement of HVAC equipment to prevent extended downtime in large areas of building.
- ◆ Provide and install (2) 2.5 Ton, (2) 3 Ton Split System Heat Pump Condenser units.
- ◆ Provide and install (2) 2.5 Ton, (2) 3 Ton Split System Air Handler Units w/Electric Aux Heater Packages.
- ◆ HVAC Equipment to be A2L Refrigerant if available.
- ◆ Flush, pressurize, and verify no leaks are present on existing refrigerant line sets. (Repair as needed)

- ◆ Reconnect to existing line sets. (Modify connections as needed)
- ◆ Reconnect units to existing supply/return ductwork. (Modify initial take offs as needed to match replacement unit)
- ◆ Reconnect AHU units to existing power and control wiring.
- ◆ Relocate ODU disconnects to exterior wall adjacent to units and run new electrical conduit/wiring to units.
- ◆ Reconnect to existing condensate drain piping. (Modify initial take offs as needed to match replacement unit)
- ◆ Provide and install (4) digital BACnet or similar thermostats.
- ◆ Perform startup of HVAC equipment and training of essential site staff on unit operation.

## Appeal Procedures

### Appeal Prior to Bid Opening

Any protest, prior to bid opening must be submitted in writing and received by the procuring agency at least twenty (20) calendar days prior to bid opening. This twenty (20) calendar day deadline may be waived by the procuring agency for good cause shown. The procuring agency's response shall be in writing and set forth the reasons for its response. The procuring agency will postmark its response no later than fifteen (15) calendar days prior to bid opening, unless the twenty (20) calendar day deadline had been extended as above. A bidder may submit further documentation on an adverse decision by the procuring agency, but no new issues will be considered.

A bidder may seek KYTC review of the procuring agency's determination. Such review shall merely be considered an oversight reconsideration and shall not constitute an adjudication by KYTC with respect to the rights of the bidder. Requests for such review must be initiated by the bidder in writing by sending a letter to KYTC, with a copy to the procuring agency, requesting KYTC review. The letter must be received by KYTC not less than five (5) calendar days before bid opening. Requests for review received less than five (5) calendar days before bid opening will not be considered. The procuring agency must immediately furnish KYTC a copy of all previous correspondence and other documentation pertaining to the bidder's request for review. In conducting its review, KYTC will consider the complaint letter and correspondence and documentation provided by the procuring agency, as well as any additional information obtained through KYTC's specific requests to the procuring agency, bidder or other third party. KYTC will not substitute its judgement for that of the procuring agency, unless the matter specifically relates to state or federal laws, regulations, or procedures.

Upon receipt of a copy of the letter requesting KYTC review, the procuring agency must immediately contact KYTC to determine if the bid opening should be postponed. If the bid opening is post-poned, the procuring agency must notify all prospective bidders who have been furnished a copy of the specifications that a request for review has been received and that the bid opening is postponed until KYTC has issued its decision. Upon receipt a KYTC's decision, the procuring agency must issue an appropriate addendum rescheduling the bid opening.

A request for review may be withdrawn by the letter from the bidders by KYTC, with a copy to the procuring agency, received at any time before KYTC has issued its decision. KYTC 's decision on any request for review under these procedures is final, and no other request will be considered by KYTC. Said decision will be rendered by letter to the procuring agency, with a copy to the bidder, and will set forth the reasons for KYTC's decision.

## Appeals After Bid Opening

Protest after bid opening will be considered only as to issues which were not apparent before the bid opening. After big opening no protests of specifications will be considered. Any protest after the bid opening, including a protest of contract award, must be submitted in writing and received by procuring agency within ten (10) calendar days of action being protested. No other form of protest will be considered. After the time for protest of contract award has expired, these protest procedures will be considered to be inapplicable, and any disputes will be resolved by the procuring agency under contract provisions or other remedies, if available. Protests submitted to the procuring agency shall:

- (a) Include the name and address of the protestor.
- (b) Identify clearly the procurement under which the project is being submitted.
- (c) Identify the action being protested and provide sufficient detailed documentation to support the protest action.
- (d) Indicate the action ruling or relief desired from the procuring agency.

The procuring agency will review the protest and render its decision in writing within ten (10) calendar days of receipt of the protest, setting forth reasons for its decision.

The procuring agency is responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of the procurement, including protest, contract defaults, disputes or breaches. The decision of the procuring agency as to protest shall be final and conclusive, unless, within ten (10) calendar days of the date a decision was rendered by the procuring agency, a written appeal of the same is submitted by the bidder to KYTC, with a copy of the procuring agency. This will constitute a request for review by KYTC of the procuring agency's action. Such review shall merely be considered and oversight reconsideration and shall not constitute and adjudication by KYTC with respect to the rights of the bidder. The procuring agency must immediately furnish KYTC a copy of all previous correspondence and other documentation pertaining to the bidder's request for review. In conducting its review, KYTC will consider only the appeal letter and correspondence and documentation provided by the procuring agency, as well as additional information obtained through specific requests to the procuring agency, bidders, protestor, or other third party. KYTC will not substitute its judgment for that of the procuring agency unless the matter specifically relates to state or federal laws, regulations or procedures. Any request for review shall, in addition to (a)-(d) above, include:

- (e) A statement of the grounds for review and any supporting documentation.  
(The grounds for review must be fully supported, but KYTC will not consider additional material not submitted to the procuring agency unless specifically requested by KYTC.
- (f) A copy of the protest filed with the procuring agency and copy of the agency's decision.

KYTC may request additional information from the procuring agency and/or the protestor. Additional information must be submitted as expeditiously as possible, but in no case later than ten (10) calendar days after the request. If the request for review is submitted prior to award of a contract, the procuring agency will not award until the matter is resolved. If the contract has been



awarded prior to the request for review, the contractor shall proceed diligently with the performance of the contract in accordance with the procuring agency's decision. The decision of KYTC shall be set forth in writing with reasons stated and shall be final and conclusive.

### **Prevailing Wage**

The project does fall under the Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) and that contractor shall supply LKLP with certified payroll documentation. The Davis Bacon and Related Acts will apply to contractors and subcontractors performing construction, alteration, or repair with federally funded or assisted contracts \$2,000 or more. Under this Act, contractors shall be required to pay wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week.

# Appendix A: Required Pricing and Bid Form

Vendor Name \_\_\_\_\_

Item	Price per unit	Total
Set up and Installation		
Annual Fee		
Item		
Item		
Item		
Item		
Add-On		
Add-On		
Any Additional Fees		

## Appendix B: Bid Form

### Perry & Leslie Transit HVAC Replacement

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

I (We) \_\_\_\_\_ of \_\_\_\_\_  
propose to furnish to LKLP, after the acceptance of the Bid by LKLP,  
\_\_\_\_\_ in accordance with the  
attached specifications. Bid prices as shown are good for 3 month(s) beginning and ending  
date(s) of \_\_\_\_\_.

\$ \_\_\_\_\_

Prices are to be F.O.B. Destination – 398 Roy Campbell Drive Hazard, KY &  
121 Maple Street Hyden, KY.

Delivery shall be made to: \_\_\_\_\_.

After receipt of any order specify, DELIVERY TIME; TERMS; \_\_\_\_\_  
\_\_\_\_\_.

EXCEPTIONS TO SPECIFICATIONS: \_\_\_\_\_.

NAME: \_\_\_\_\_

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

# Appendix C: Bidder Checklist

## RFP Checklist of Required Documents and Signatures

This checklist shall be completed and signed along with the required items listed on this page and shall be sent to LKLP with the bid submittal.

**Send with Completed Bid**

	Bid Forms found in Appendix A, B, C & D.
	Completed Bid Opportunity List required by the Kentucky Transportation Cabinet (KYTC), Office of Transportation (OTD). This form is located as Appendix D.
	Bidder shall send a cover letter on company letterhead, signed by an individual authorized to commit the firm’s resources to the proposed purchase and to execute legal documents for the company. Letter should contain name, telephone number, name of project lead, additional contacts for continued support and a second member of upper management who can escalate and resolve any unexpected issues.
	Two (2) original paper copies
	Description of the services of replacement of LKLP roof that meets the minimum requirements set forth by LKLP in the technical specifications
	Include a statement showing the capacity to complete installation within 120 working days of acceptance to proceed from LKLP.
	Signed Buy America Assurance Clause of the Federal Model Clauses included in this bid document (for bids over \$100,000)
	Signed Anti-Lobbying assurance of the Federal Model Clause included in this bid document (for bids over \$100,000)
	Send the original, signed Federal Model Clause Assurance page known as the Federal Model Clauses Certification of Compliance of the Federal Model Clauses included in this bid document.
	Proof of active registration on Sam.gov
	Proof of commercial insurance meeting the minimum statues of the Commonwealth of Kentucky.

---

Signature of Authorized person      Print Name      Date      Phone Number

# Appendix D: Bid Opportunity List

## BID OPPORTUNITY LIST

Transit Agency: \_\_\_\_\_  
 \_\_\_\_\_

Prime Contractor/Consultant:	_____
Mailing Address:	_____
Physical Address:	_____
Majority Owner's:	Race: _____ Gender: _____
Telephone Number:	_____
FAX Number:	_____
Quote/Bid Submitted MM/YR:	_____
Primary Business Function:	_____
Work bidding or providing quote on and corresponding NAICS Code:	_____

**Note:** Under the authority of The Department of Transportation we are required to develop and maintain a "bid opportunity list." The list is intended to be a listing of all firms that are participating, or attempting to participate, on DOT-assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and materials supplies on DOT-assisted projects, including both DBEs and non-DBEs. For consulting companies this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific DOT assisted project. Prime contractors and consultants must provide information for Nos. 1,2,3, and 4 and should also provide any information they have available on Numbers 5,6,7, 8, and 9 for themselves, and their subcontractors and subconsultants.

<p><b>1. Federal Tax ID Number:</b> _____</p> <p><b>2. Firm Name:</b> _____</p> <p><b>3. Phone:</b> _____</p> <p><b>4. Address:</b> _____                  _____                  _____</p> <p><b>5. Year Firm Established:</b> _____</p>	<p><b>*8. <input type="radio"/> SBA</b></p>	<p style="text-align: center;">Mark One</p> <p><b>9. Annual Gross Receipts</b></p> <p style="text-align: center;">Less than \$1 million</p> <p><input type="checkbox"/> Between \$1 - \$5 million</p> <p><input type="checkbox"/> Between \$5 - \$10 million</p> <p><input type="checkbox"/> Between \$10-\$15 million</p> <p><input type="checkbox"/> More than \$15 million</p> <p><input checked="" type="checkbox"/> &gt; than \$15 million but &lt; \$30.40 million *See below</p>
<p style="text-align: center;">Mark One</p> <p><input type="checkbox"/> DBE</p> <p><input type="checkbox"/> Non-DBE</p>	<p style="text-align: center;">Mark One</p> <p><b>7.</b> <input type="checkbox"/> Subcontractor</p> <p><input type="checkbox"/> Subconsultant</p>	<p><b>10. Attach References and other credentials.</b></p>

Remarks: \_\_\_\_\_  
 \_\_\_\_\_

\*The standards of the Small Business Administration (SBA) found in 13 CFR part 121 must be met. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS). The firm's (including its affiliates) average annual gross receipts over the past three (3) fiscal years must not have been in excess of \$30.40 million.

## **ATTACHMENT E**

**Section 5311/5310/5307/5339**

**Subrecipient Agreement/Vendor Agreement/Bid Package**

**Federally Required and Model Contract Clauses**

**TABLE OF CONTENTS (Governing Documents)**

**These Federally Required and Model Contract Clauses are for**

**LKLP CAC, Inc.**, hereinafter referred to as the

**Subrecipient.**

### **Federally Required and Other Model Contract Clauses**

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

## **1. FLY AMERICA REQUIREMENTS**

**49 U.S.C. § 40118  
41 CFR Part 301-10**

### **Applicability to Contracts**

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

### **Flow Down Requirements**

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

### **Model Clause/Language**

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

### **Fly America Requirements**

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

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## **2. BUY AMERICA REQUIREMENTS**

**49 U.S.C. 5323(j)  
49 CFR Part 661**

### **Applicability to Contracts**

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).

**Flow Down**

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$150,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

**Mandatory Clause/Language**

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

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless 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 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11. The bidder or offeror must submit to Recipient the appropriate Buy America certification below with its bid or offer. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

When procuring rolling stock, which includes train control, communication traction power equipment, and rolling stock prototypes, the cost of the components and subcomponents in the U.S. be:

- more than 60 percent for FY2016 and FY2017
- more than 65 percent for FY2018 and FY2019
- more than 70 percent for FY2020 and beyond

Final assembly for rolling stock also must occur in the U.S. Additionally, rolling stock procurements are subject to the pre-award and post-delivery Buy America audit provisions set forth in 49 U.S.C. § 5323(m) and 49 CFR part 663.

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

*Certificate of Compliance*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_



*Certificate of Non-Compliance*

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

*Certificate of Compliance*

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

*Certificate of Non-Compliance*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

---

### **3. CHARTER BUS REQUIREMENTS**

**49 U.S.C. 5323(d)**

**49 CFR Part 604**

#### **Applicability to Contracts**

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

#### **Flow Down Requirements**

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

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

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

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

---

### **3. SCHOOL BUS REQUIREMENTS**

**49 U.S.C. 5323(F)**

**49 CFR Part 605**

#### **Applicability to Contracts**

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

#### **Flow Down Requirements**

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

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

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

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

an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

---

#### **4. CARGO PREFERENCE REQUIREMENTS**

**46 U.S.C. 1241  
46 CFR Part 381**

##### **Applicability to Contracts**

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

##### **Flow Down**

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

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

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

**Cargo Preference - Use of United States-Flag Vessels** - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

---

#### **5. SEISMIC SAFETY REQUIREMENTS**

**42 U.S.C. 7701 et seq. 49  
CFR Part 41**

##### **Applicability to Contracts**

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

##### **Flow Down**

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

**Model Clauses/Language**

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

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

---

**6. ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.**

**2 CFR Part 200**

**Applicability to Contracts**

The Energy Conservation requirements are applicable to all contracts.

**Flow Down**

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

**Model Clause/Language**

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

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

---

**7. CLEAN WATER REQUIREMENTS**

**33 U.S.C. 1251**

**Applicability to Contracts**

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

**Flow Down**

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

### **Model Clause/Language**

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

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

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

---

## **8. BUS TESTING**

**49 U.S.C. 5323(c)**

**49 CFR Part 665**

### **Applicability to Contracts**

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

### **Flow Down**

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

### **Model Clause/Language**

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

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

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report,

which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988 and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

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

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

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

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

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

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

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

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

**49 U.S.C. 5323**

**49 CFR Part 663**

#### **Applicability to Contracts**

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

#### **Flow Down**

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

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

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

subrecipients and third party contractors.

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

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

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

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

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

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

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

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

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

*(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$150,000.)*

#### Certificate of Compliance

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

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

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

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

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

Certificate of Non-Compliance

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

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

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

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

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

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**10. LOBBYING**  
**31 U.S.C. 1352**  
**2 CFR Part 200**  
**49 CFR Part 20**

**Applicability to Contracts**

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

**Flow Down**

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 2 CFR Part 200.

**Mandatory Clause/Language**

Clause and specific language therein are mandated by 2 CFR Part 200.

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

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are



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

- Language in Lobbying Certification is mandated by 2 CFR Part 200, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

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

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

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

##### Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned

shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

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

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

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

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

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

**49 U.S.C. 5325**

**2 CFR Part 200.337**

**49 CFR 633.17**

### **Applicability to Contracts**

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

### **Flow Down**

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

### **Model Clause/Language**

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

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 2 CFR Part 200.337 the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 2 CFR Part 200.320, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this

contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 2 CFR Part 200.337.

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

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

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

Sources of Authority:

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

<sup>2</sup> 49 CFR 633.17

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

## 12. FEDERAL CHANGES 2 CFR Part 200

### Applicability to Contracts

The Federal Changes requirement applies to all contracts.

### Flow Down

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

### Model Clause/Language

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

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

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### **13. BONDING REQUIREMENTS**

#### **Applicability to Contracts**

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

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - (1) 50% of the contract price if the contract price is not more than \$1 million;
  - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

#### **Flow Down**

Bonding requirements flow down to the first tier contractors.

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

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

## **Bid Bond Requirements (Construction)**

### **(a) Bid Security**

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

### **(b) Rights Reserved**

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

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

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

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

## **Performance and Payment Bonding Requirements (Construction)**

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

### **(a) Performance bonds**

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

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

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

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

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

(iii) Two and one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, the (Subrecipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

**Performance and Payment Bonding Requirements (Non-Construction)**

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

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

1. (Subrecipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the (Subrecipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

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

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

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

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



the (Subrecipient).

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

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

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

1. The penal amount of payment bonds shall equal:

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

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

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

#### **Advance Payment Bonding Requirements**

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

#### **Patent Infringement Bonding Requirements (Patent Indemnity)**

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

#### **Warranty of the Work and Maintenance Bonds**

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

required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

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**14. CLEAN AIR**  
**42 U.S.C. 7401 et seq**  
**40 CFR 15.61**  
**2 CFR Part 200**

**Applicability to Contracts**

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

**Flow Down**

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

**Model Clauses/Language**

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

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

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



## **15. RECYCLED PRODUCTS**

**42 U.S.C. 6962**

**40 CFR Part 247**

**Executive Order 12873**

### **Applicability to Contracts**

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

### **Flow Down**

These requirements flow down to all to all contractor and subcontractor tiers.

### **Model Clause/Language**

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

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

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## **16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

### **Background and Application**

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

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

## **Clause Language**

### **Davis-Bacon and Copeland Anti-Kickback Acts**

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

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

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

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

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

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

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

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

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

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

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

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

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be

classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

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

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

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

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

or part of the wages required by the contract, the Subrecipient may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

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



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

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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## **17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

### **Background and Application**

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 2 CFR Part 200, Appendix II. Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 2 CFR Part, Appendix II, the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3) (A)(iii).

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

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

### **Clause Language**

#### **Contract Work Hours and Safety Standards**

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

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

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

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

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

### **Applicability to Contracts**

Applicable to all contracts.

### **Flow Down**

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

### **Model Clause/Language**

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

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

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

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

**19. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS  
AND RELATED ACTS**  
**31 U.S.C. 3801 et seq.**  
**49 CFR Part 31 18 U.S.C. 1001**  
**49 U.S.C. 5307**

**Applicability to Contracts**

These requirements are applicable to all contracts.

**Flow Down**

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

**Model Clause/Language**

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

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

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

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**20. TERMINATION**  
**2 CFR PART 200**  
**FTA Circular 4220.1F**

**Applicability to Contracts**

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

**Flow Down**

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

**Model Clause/Language**

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

**a. Termination for Convenience (General Provision)** The (Subrecipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Subrecipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Subrecipient), the Contractor will account for the same, and dispose of it in the manner the (Subrecipient) directs.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

**i. Termination for Convenience or Default (Architect and Engineering)** The (Subrecipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Subrecipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective

date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

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

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

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

**j. Termination for Convenience of Default (Cost-Type Contracts)** The (Subrecipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Subrecipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Subrecipient), or property supplied to the Contractor by the (Subrecipient). If the termination is for default, the (Subrecipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Subrecipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

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

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

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

### **Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide

regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

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

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

### **Clause Language**

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

### **Suspension and Debarment**

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

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

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

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

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

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**22. PRIVACY ACT**  
**5 U.S.C. 552**

**Applicability to Contracts**

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

**Flow Down**

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

**Model Clause/Language**

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

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

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

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

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

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**23. CIVIL RIGHTS REQUIREMENTS**  
**29 U.S.C. § 623, 42 U.S.C. § 2000**  
**42 U.S.C. § 6102, 42 U.S.C. § 12112**

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

**Applicability to Contracts**

The Civil Rights Requirements apply to all contracts.

**Flow Down**

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

**Model Clause/Language**

The following clause was predicated on language contained at 2 CFR Part 200, but FTA has shortened the lengthy text.

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

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

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

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

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to

refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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## **24. BREACHES AND DISPUTE RESOLUTION**

### **2 CFR Part 200**

### **FTA Circular 4220.1F**

### **2 CFR Part 180.220 and 1200.220**

#### **Applicability to Contracts**

All contracts equal to or in excess of \$25,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

#### **Flow Down**

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

**Notification to FTA; Flow Down Requirement.** If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

#### **2 C.F.R. §§ 180.220(b)–(c)**

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

- (1) The contract is awarded by a participant in a nonprocurement transaction that is covered under §180.210, and the amount of the contract is expected to equal or exceed \$25,000.

(2) The contract requires the consent of an official of a Federal agency. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for Federally-required audit services.

(c) A subcontract also is a covered transaction if,—

(1) It is awarded by a participant in a procurement transaction under a nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to additional tiers of contracts (see the diagram in the appendix to this part showing that optional lower tier coverage); and

(2) The value of the subcontract is expected to equal or exceed \$25,000.

#### 2 C.F.R. § 1200.220

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180).

**FTA Interest.** FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and Cabinet/FTA reserves the right to concur in any settlement or compromise.

**Notification to FTA; Flow Down Requirement.** If a current or prospective legal matter that may affect the Federal Government or State Government emerges, the Recipient must promptly notify the Cabinet. If a current or prospective legal matter that may affect the Federal Government emerges, the Cabinet must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which Cabinet is located. In addition, the Recipient must include a similar notification requirement in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 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 or State

Government as a party to litigation or a legal disagreement in any forum for any reason.

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

3. Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the Cabinet if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The Cabinet must notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located. 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 Recipient and the Cabinet, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. 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 Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

**Federal Interest in Recovery.** The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.

**Enforcement.** The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

**Model Clauses/Language**

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

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by



agreement of the parties shall be decided in writing by the authorized representative of (Subrecipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

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

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## **25. PATENT AND RIGHTS IN DATA**

**37 CFR Part 401**

**2 CFR Part 200**

### **Applicability to Contracts**

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

### **Flow Down**

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

### **Model Clause/Language**

The FTA patent clause is substantially similar to the text of 2 CFR Part 200, but the rights in data

clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

## CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

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

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

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

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

(b) In accordance with 2 CFR Part 200, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

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

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

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is

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

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

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

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

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

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

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative

Agreements," 37 C.F.R. Part 401.

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

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

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

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

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

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## **26. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**

**49 U.S.C. § 5310, § 5311, and § 5333**

**29 CFR Part 215**

### **Applicability to Contracts**

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

### **Flow Down**

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

### **Model Clause/Language**

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

**Transit Employee Protective Provisions.** (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

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

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

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

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

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

## **49 CFR Part 26**

### **Background and Applicability**

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

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

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

### **Clause Language**

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

### **Disadvantaged Business Enterprises**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 5%. A separate contract goal **has not** been established for this procurement.

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

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

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above [as a matter of responsiveness] [with initial bids] [prior to contract award] (see 49 CFR 26.53(3)).

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

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Subrecipient. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Subrecipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify Subrecipient, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Subrecipient.

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## **28. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS** **FTA Circular 4220.1F**

### **Applicability to Contracts**

The incorporation of FTA terms applies to all contracts.

### **Flow Down**

The incorporation of FTA terms has unlimited flow down.

### **Model Clause/Language**

FTA has developed the following incorporation of terms language:

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, 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 Subrecipient requests



which would cause Subrecipient to be in violation of the FTA terms and conditions.

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## **29. DRUG AND ALCOHOL TESTING**

**49 U.S.C. §5331**

**49 CFR Part 655**

### **Applicability to Contracts**

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

### **Flow Down Requirements**

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 655, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

### **Model Clause/Language**

#### **Introduction**

FTA's drug and alcohol rules, 49 CFR 655, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

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

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

#### **Explanation of Model Contract Clauses**

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 655. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 655, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

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

### **Drug and Alcohol Testing Option 1**

The contractor agrees to:

*(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR Part 655*

### **Drug and Alcohol Testing Option 2**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Kentucky, or the Subrecipient, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The contractor agrees further to certify annually its compliance with Part 655 before December 31 and to submit the Management Information System (MIS) reports before February 15 to the Drug and Alcohol Program Manager (DAPM). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

### **Drug and Alcohol Testing Option 3**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance

with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Kentucky, or the Subrecipient, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR compliance with Parts 655 before December 31 and to submit the Management Information System (MIS) reports before February 15 to the Drug and Alcohol Program Manager (DAPM). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to (a) submit before December 31 a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt the Subrecipient's Policy Statement as its policy statement as required under 49 CFR 655; OR (c) submit for review and approval before December 31 a copy of its Policy Statement developed to implement its drug and alcohol testing program.

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**30. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**  
**2 CFR Part 200**

§ 200.216. Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients 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 of 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 Dahua 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.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also § 200.471.

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### **31. Seat Belt Use** **2 CFR Part 200**

The bidder or offeror agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (1) Adopting and promoting 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; and
  - (2) Including a “Seat Belt Use” provision in each third party agreement related to the Award.
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### **32. Distracted Driving, Including Text Messaging While Driving** **2 CFR Part 200**

The bidder or offeror agrees to comply with:

- (1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);
- (2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and
- (3) The following U.S. DOT Special Provision pertaining to Distracted Driving:
  - (i) *Safety*. The bidder or offeror agrees 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 bidder or offeror owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award;
  - (ii) *Size*. The bidder or offeror agrees 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; and
  - (iii) *Extension of Provision*. The bidder or offeror agrees to include the

preceding Special Provision of section 32(3)(i) – (ii) of these Federal Model Clauses in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

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**33. CERTIFICATION OF COMPLIANCE**

The bidder or offeror hereby certifies that it will meet the requirements of the applicable regulations in these Model Clauses.

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

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

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

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