

Invitation for Bids

FRTA IFB #2016-0415
Construction Services for Parking Lot Expansion

ISSUED BY:
Franklin Regional Transit Authority
12 Olive St
Greenfield, MA 01301

July 13, 2016

TABLE OF CONTENTS

| | |
|--|-----------|
| <i>I. PUBLIC NOTICE</i> | 3 |
| <i>II. GENERAL TERMS AND CONDITIONS</i> | 3 |
| A. Introduction | 3 |
| B. Overview of Services Sought | 3 |
| C. Project Schedule and Submission Instructions | 3 |
| D. Limitation on Funding | 4 |
| E. Proprietary Information | 4 |
| <i>III. PROJECT INFORMATION</i> | 5 |
| A. Clerk of the Works | 5 |
| B. Insurance | 5 |
| C. Federal Clauses | 6 |
| D. Disadvantaged Business Enterprise | 6 |
| E. Additional Information | 6 |
| F. Bid Evaluation and Selection Process | 6 |
| G. Contract Award | 7 |
| H. Notice to Proceed | 7 |
| I. Contract Bonds | 7 |
| <i>IV. REQUIRED SUBMISSIONS</i> | 7 |
| A. Contents of Bid | 7 |
| Part 1: Minimum Qualifications | 8 |
| Part 2: Cost Proposal | 8 |
| <i>V. ACKNOWLEDGEMENT OF RECEIPT FORM</i> | 9 |
| <i>V. ATTACHMENTS</i> | 10 |
| A. Attachment A Special Provisions | |
| B. Attachment B Plan Set | |
| C. Attachment C Required Federal Clauses & Required Certifications | |
| D. Attachment D General Information Form and W9 Form | |
| E. Attachment E Bid Protest Policy | |
| F. Attachment F Sample Contract Agreement | |
| G. Attachment G Weekly Payroll Records Report & Statement of Compliance Form | |
| H. Attachment H Prevailing Wage Schedule | |

Invitation for Bids
Construction Services for Parking Lot Expansion

I. PUBLIC NOTICE

The Franklin Regional Transit Authority (FRTA) is accepting bids for construction services for a parking lot expansion at its regional transit center located at 12 Olive St., Greenfield, MA 01301. The contract for this project is for construction services for the expansion of FRTA's parking lot located at 12 Olive St. in Greenfield.

Beginning on July 13, 2016 at 2:00pm, interested parties may obtain a copy of the IFB online at www.frta.org, by contacting the FRTA at 413-774-2262, or emailing Brett Grout, Facility Manager at brett@frta.org. An optional pre-bid meeting will be held at the Franklin Regional Transit Authority, 12 Olive Street, Greenfield, MA on July 20, 2016 at 9:00am. Project questions are due by July 25, 2016 at 2:00pm. The completed Acknowledgement of Receipt Form must be received at FRTA prior to July 27, 2016 in order to receive any addendums containing written questions and answers, and/or any schedule modifications.

Project bids are due back to the FRTA by 2:00 p.m., August 1, 2016.

II. GENERAL TERMS AND CONDITIONS

A. Introduction

The Franklin Regional Transit Authority (FRTA) was established in 1978 with the provisions of the Massachusetts General Laws, Chapter 161B. The FRTA currently serves 41 communities throughout Franklin, Hampden, Hampshire and Worcester Counties. The FRTA is a political subdivision of the Commonwealth of Massachusetts and is funded by Federal, Local and State governments. Though not the biggest transit authority in Massachusetts, the FRTA covers the largest (over 1,100 square miles) and the most rural geographical area in the State. The Authority is given general responsibilities to develop, finance and contract for the operation of transportation facilities and services within its transit area. The day-to-day affairs of the Authority are managed by the Administrator, appointed by the Advisory Board. According to the statute, regional transit authorities cannot operate service directly, but instead must contract with private operators for the provision of service. The FRTA contracts with Franklin Transit Management, Inc. for their fixed route and some demand response service. Due to the rural area it serves, the FRTA also contracts with some of the local Councils on Aging to provide additional demand response transportation. Service is currently in operation Monday through Friday.

B. Overview of Services Sought

The FRTA is seeking a qualified contractor to provide construction services for its parking lot expansion. The specifics of the work to be performed and other documents relative to this IFB, are set forth within this document and the Attachments hereto and made a part hereof.

C. Project Schedule and Submission Instructions

Three (3) hard copies of the completed proposal will be marked "FRTA Parking Lot Construction Bid" and will be received at the office of the Franklin Regional Transit Authority, 12 Olive Street, Greenfield, MA

01301 until 2:00 p.m. on Monday, August 1, 2016. Bids received after that date and time will not be considered.

Please note that the costs associated with the preparation of this Bid are the sole responsibility of the applicable Bidder. Bidders shall not include any such expenses as part of the price proposed in response to the IFB.

The FRTA's timeline for this project is to be substantially completed on or before November 30, 2016 (see Attachment A). This shall include that all required services, equipment, permits, and agreements must be delivered, installed, and fully operational by this date. The awarded Bidder shall work with FRTA to ensure that all deliverables are completed within a timeframe that will adhere to FRTA schedule.

Communication by any Bidder with any agent or employee of the FRTA on the subject of this IFB, or the pending process may result in that Bidder being deemed ineligible with regard to the IFB. There will be an optional pre-bid meeting at the Franklin Regional Transit Authority, 12 Olive Street, Greenfield, MA 01301 on July 20, 2016 at 9:00am. All questions and requests for clarification regarding this solicitation or this IFB process must be submitted in writing to Brett Grout, Facility Manager of the FRTA on or before 2:00 p.m., July 25, 2016. Questions can be submitted by email to brett@frta.org. Any corrections or changes to this IFB will be made by written addendum only and will be distributed to all known recipients of record that have successfully returned the Acknowledgement Form.

The FRTA reserves the right to issue addenda to this IFB or to make adjustments to its project schedule if it is deemed in the FRTA's best interest to do so. The FRTA further reserves the right to reject any and all Bids resulting from this IFB if it is deemed in the best interest of the FRTA to do so.

Below is a timeline of key dates for this project:

| | |
|--|--------------------------|
| IFB Release | July 13, 2016 @ 2:00pm |
| Optional Pre-Bid Meeting | July 20, 2016 @ 9:00am |
| Written Questions Submitted to FRTA | July 25, 2016 @ 2:00pm |
| Answers/Clarifications Sent to Proposers | July 27, 2016 |
| Proposals due | August 1, 2016 @ 2:00 pm |
| Contract award and Notice to Proceed by | August 5, 2016 |
| Project Substantial Completion | November 30, 2016 |

D. Limitation on Funding

The Contract resulting from this IFB will be subject to the availability of funds from FRTA's funding sources. The Contract for this service is contingent upon receipt of these funds by FRTA. In the event that funding from these sources is eliminated or decreased, FRTA reserves the right to terminate the Contract or modify it accordingly.

E. Proprietary Information

All Bids shall become the property of FRTA. If any proprietary information is contained in or attached to a Bid, it must be clearly identified as such. Please note that FRTA is subject to the provisions of Chapter 4, Section 7, Clause 26, of the general laws of Massachusetts, and other Chapters thereof related thereto. If more than twenty-five percent (25.00%) of the contents of the Bid are specified as proprietary information, the Bid may be deemed non-responsive by the FRTA.

III. PROJECT INFORMATION

A. Clerk of the Works

The FRTA shall provide a Clerk of the Works for this project and shall work in consultation with McMahon Associates. The Clerk of the Works shall perform faithfully, and to the best of his ability, the duties and responsibilities of the position including collecting certified payrolls, reviewing monthly requisitions and making recommendations for payment and conducting sites visits to determine that the construction is being implemented in accordance with the plans and specifications. The Clerk of the Works shall attend job related meetings as necessary to perform his duties. The Clerk of the Works agrees that the services provided hereunder shall conform to the professional standard of care and practice exercised by others engaged in performing comparable services; and that the recommendations, guidance and performance of the Clerk acknowledges that he is familiar with and has a working knowledge of the Massachusetts provisions relating to competitive public bidding, including, but not limited to M.G.L.Ch. 149, Section 44A-44J, and M.G.L. Ch. 30, Section 39M. The Clerk's duties will be as follows:

- making sure that work is carried out to the client's standards, specification, correct materials, workmanship and schedule
- becoming familiar with all the relevant drawings and written instructions, checking them and using them as a reference when inspecting work
- making visual inspections
- taking measurements and samples on site to make sure that the work and the materials meet the specifications and quality standards
- being familiar with legal requirements and checking that the work complies with them.
- having a working knowledge of health and safety legislation and bringing any shortfalls observed to the attention of the resident engineer.
- advising the contractor about certain aspects of the work, particularly when something has gone wrong, but this advice should not be interpreted as an instruction

Their main responsibility is to make sure that work is carried out to the FRTA's standards, specifications, and schedule. Clerks of Works make sure that the correct materials and workmanship are used and that the client is given quality work and value for money.

B. Insurance

All proposers shall be able to provide and maintain the following insurance requirements through the completion of the project:

The successful proposer, and any sub-contractors, shall provide commercial general liability insurance including products and completed operations with limits of at least \$1,000,000 for each occurrence and \$2,000,000 in the aggregate. The successful proposer shall also provide, at minimum, \$1,000,000 umbrella policy. The successful proposer, and any sub-contractors, shall provide auto liability insurance covering with limits of at least \$1,000,000 for each occurrence and in the aggregate. In addition the successful proposer, and any sub-contractors, shall provide worker's compensation insurance, as required by the laws of the Commonwealth of Massachusetts.

The successful proposer, and any sub-contractors, shall furnish to the FRTA Certificates of Insurance showing coverage as set forth above prior to performing the services for this project as described in this document. All insurance coverage required herein shall be issued by carriers with a financial rating of A or better. The successful proposer, and any sub-contractors, shall add the FRTA as the project owner and shall name the FRTA as an additional insured with respects to the general liability, the umbrella insurance, and auto liability insurance policies as outlined above.

The successful proposer, and any of their subcontractors, shall be required to provide proof of existing general liability insurance, umbrella insurance, auto liability insurance and worker's compensation insurance prior to FRTA authorizing a Notice to Proceed.

C. Federal Clauses

Attachment C attached hereto and made a part hereof sets forth Federal Clauses and Certifications placed upon vendors of FRTA who are participating in a project funded in whole or in part with Federal grants. Its provisions are hereby included as an integral part this IFB.

D. Disadvantaged Business Enterprise (DBE)

The FRTA has created a program plan that outlines policies to implement a Disadvantaged Business Enterprise (DBE) program that encourages opportunities for DBE companies on Federal Transit Administration funded contracts which comply with all requirements established by CFR 49 part 26. For the fiscal years beginning in July 2013 through June 2016, the FRTA has established an overall DBE participation goal of 1% with its Federal Transit Administration funded contracts. While the FRTA is not establishing a specific DBE participation goal for this project, the FRTA encourages participation from certified DBEs with this project.

E. Additional Information

FRTA is exempt for all sales taxes and taxes must not be included in the price. The necessary exemption certificates shall be provided to the successful proposer.

Any addenda issued by FRTA will be emailed to interested parties that have completed and returned an Acknowledgement of Receipt Form.

This project is being funded by federal funds and the awarded contractor for the construction portion of this project must comply with the provisions of the Davis-Bacon and Copeland Anti-Kickback Acts (29 CFR) and Massachusetts General Law Ch. 149. A copy of the Prevailing Wage Schedule is included in this bid document. In addition, a copy of the Massachusetts Weekly Certified Payroll Report form and a copy of the Weekly Payroll Records Report & Statement of Compliance form are included this bid document.

F. Bid Evaluation and Selection Process

It is FRTA's intent to award the contract to the qualified Bidder that is most responsible and responsive based on their qualifications and the lowest total project cost.

The Evaluation Committee shall review each Bid proposal submitted to ensure Bidders meet the minimum qualifications as outlined in this document. The Evaluation Committee may invite some or all of the

Bidders to submit additional material to support or clarify their Bids and will take all information provided into consideration in making their list of qualified Bidders.

The Evaluation Committee shall select and present to the FRTA's Administrator a list of qualified Bidders of the project. The FRTA Administrator will then open the cost proposals of **only** those Bidders that have been deemed qualified.

FRTA reserves the right to contact Bidder(s) regarding areas of concern, areas to be negotiated and/or request for best and final offers. FRTA reserves the right to award on the basis of initial proposal submitted without negotiations or discussions if such action is deemed to be in the best interest of FRTA.

G. Contract Award

FRTA will not make an award to, or initiate negotiations with, any proposer solely on the basis of financial terms offered by any proposer. The proposals will not be opened in public. The proposals will not be made available to anyone other than the members of the Evaluation Committee. Respondents are advised that the Administrator of the FRTA, as Chief Executive Officer, is solely responsible for the award of a contract. The award will be made to the most highly qualified firm. All contract award communication shall be sent to the Bidders in writing. A Sample Contract Agreement can be found in Attachment F of this document.

H. Notice to Proceed

FRTA will issue a formal Notice to Proceed after the selected contractor has satisfied all of initial requirements that result from this IFB, and the resulting contract agreement.

I. Contract Bonds

FRTA will require Bidders, and the successful Contractor, to meet the following bonding requirements:

All Bidders –

- 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.

Successful Contractor –

- 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.
- 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. The payment bond must be 50% of the contract price if the contract price is not more than \$1 million.

IV. REQUIRED SUBMISSIONS

A. Contents of Bid

The Bid shall be organized in conformance with the format detailed within this section. The Bid shall include three (3) hard copies of each Bidder's Qualifications and one (1) hard copy of each Bidder's Cost Proposal.

In awarding a contract, FRTA reserves the right to consider all elements which help to determine the best Bid. Any Bid which is incomplete, conditional, obscure, contains additions not called for, or includes irregularities of any kind may be rejected.

All required certifications must be completed, signed and submitted with each Bid.

The Bid shall be signed by an individual authorized to bind the contractor and shall contain a statement to the effect that the bid price is a firm offer for a sixty (60) calendar day period from the date of the opening. FRTA reserves the right to negotiate price and services.

The successful Bidder shall be the prime contractor and shall be solely responsible for all contractual performance. In the event of a subcontracting relationship, the successful Bidder will assume all responsibility for the performance of the products and/or services that are supplied by the subcontractor.

Once FRTA has formally awarded the contract the successful Bidder shall commence work once a written Notice to Proceed has been received.

The Bid shall consist of two parts and include the following information for FRTA to consider:

Part 1:

Minimum Qualifications

The proposer must have at least the following minimum qualifications to be considered qualified for this project:

- 5 years of experience in construction projects similar in nature as described in this IFB
- Three owner references that demonstrate the Bidder's experience and knowledge of prevailing wage as issued by the Executive Office of Labor and Workforce Development and related statutes covered within Massachusetts General Law, and the Davis-Bacon and Copeland Anti-Kickback Acts
- Submit a project timeline demonstrating substantial project completion on or before November 30, 2016.
- Completed Acknowledgement of Receipt Form
- Completed Required Federal Clauses and Certifications (Attachment C)
- Completed General Information Form and W-9 Form (Attachment D)
- A Bid Guarantee equivalent to five (5) percent of the bid price.

Part 2:

Cost Proposal

The FRTA requests that each proposer submit with their proposal a **separate** cost proposal, marked as such. The proposer shall include all costs associated with the completion of the project as described in this IFB. Proposers are encouraged to submit other information which may be pertinent to the cost of this IFB.

Acknowledgement of Receipt Form*

Acknowledgement of Receipt of IFB*



RFP #2016-0415

Construction Services for Parking Lot Expansion

For the

John W. Olver Transit Center

Name of Firm: _____

Contact Person: _____

Address: _____

Telephone Number: _____

Fax Number: _____

Email: _____

PLEASE RETURN TO Brett Grout at Brett@frta.org

***Addenda will only be forwarded to those firms that complete and submit the *RECEIPT OF IFB* form by July 27th 2016.**

V. ATTACHMENTS A - H

ATTACHMENT A

RFP #2016-0415

**Construction Services for Parking Lot Expansion
SPECIAL PROVISIONS**

ATTACHMENT B

RFP #2016-0415

**Construction Services for Parking Lot Expansion
PLAN SET**

ATTACHMENT C

RFP #2016-0415

Construction Services for Parking Lot Expansion

REQUIRED FEDERAL CLAUSES AND CERTIFICATIONS

Required Federal Clauses

CERTIFICATION OF ELIGIBILITY

_____ hereby certifies that it
(Name of Consultant)

is not included on the U.S. Comptroller General's Debarred Bidders List.

Signature: _____

Firm: _____

The Proposer certifies to the best of its knowledge and belief that it and its principals

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any Federal department or agency.
- B. Have not, within a three-year period preceding the date of this Proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property.
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph B of this Certification.
- D. Have not, within a three-year period preceding the date of this Proposal, had one or more public transactions (Federal, State or local) terminated for cause or default.

_____Where the Proposer _____is unable to certify to any of the statements in this certification, such Proposer shall include an explanation in such regard with its Proposal.

(Check One)

I DO CERTIFY

I DO NOT CERTIFY

Date: _____ Printed Name: _____

Signature: _____

Title: _____

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(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.

Signed_____

Date_____

**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**

(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.

Signed_____

Date_____

Required Federal Clauses

ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

Signed _____

Date _____

Required Federal Clauses

Requirements for Access to Records and Reports by Types of Contract

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

FEDERAL CHANGES

49 CFR Part 18

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.

Signed_____

Date_____

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1E

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

Signed_____

Date_____

ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

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.

Signed_____

Date_____

TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1E

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the FRTA 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.

- a. **Termination for Convenience (General Provision)** The FRTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in their 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 FRTA to be paid the Contractor. If the Contractor has any property in its possession belonging to the FRTA, the Contractor will account for the same, and dispose of it in the manner the FRTA 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 FRTA 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.
- c. **Opportunity to Cure (General Provision)** The FRTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 days 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
- d. **Waiver of Remedies for any Breach.** In the event that FRTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by FRTA shall not limit FRTA'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 FRTA, by written notice, may terminate this contract, in whole or in part, when it is in their best 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 FRTA may terminate this contract for default. The FRTA 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.

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 FRTA may terminate this contract for default. The FRTA 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.

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 FRTA may terminate this contract for default. The FRTA 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.

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

j. Termination for Convenience of Default (Cost-Type Contracts) The FRTA may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the FRTA 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 FRTA, or property supplied to the Contractor by the FRTA. If the termination is for default, the FRTA 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 FRTA and the parties shall negotiate the termination settlement to be paid the Contractor.

Signed_____

Date_____

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29

Executive Order 12549

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

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

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

The certification in this clause is a material representation of fact relied upon by **FRTA**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **FRTA**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Signed_____

Date_____

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

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 FRTA 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 FRTA 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 FRTA 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.

Signed _____

Date _____

CERTIFICATION OF NON-COLLUSION

The Undersigned certifies, under penalties of perjury, that this Proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union committee, club, or other organization, entity or group of individuals.

SIGNATURE: _____

NAME: _____

FIRM: _____

DATE: _____

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.

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.

Signed _____

Date _____

Buy America Requirements

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

Applicability to Contracts

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

Flow Down

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

Mandatory Clause/Language

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

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

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

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

Breaches and Dispute Resolution

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

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

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

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

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

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

Lobbying

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

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down

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

Mandatory Clause/Language

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

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

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)
- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

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

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

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

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.

CLEAN AIR

42 U.S.C. 7401 *et seq*

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

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

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

Contract Work Hours and Safety Standards Act

Background and Application

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

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

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

Clause Language

Contract Work Hours and Safety Standards

1. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages** - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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

Flow Down

Bonding requirements flow down to the first tier contractors.

Model Clauses/Language

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

Bid Bond Requirements (Construction)

a. Bid Security

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

b. Rights Reserved

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

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

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by

default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

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

Performance and Payment Bonding Requirements (Construction)

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

a. Performance bonds

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

b. Payment bonds

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

Performance and Payment Bonding Requirements (Non-Construction)

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

a. The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

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

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

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

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

1. The penal amount of payment bonds shall equal:
 - i. Fifty percent of the contract price if the contract price is not more than \$1 million;

- ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- iii. Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

Seismic Safety Requirements

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

Applicability to Contracts

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

Applicability to Micro-Purchases

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

Flow Down

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

Model Clauses/Language

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

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

DBE CLAUSES

DBE UTILIZATION FORM

The undersigned Proposer has satisfied the requirements of the RFP specification in the following manner (please check the appropriate space):

_____ The Proposer is committed to a minimum of _____% DBE utilization on this contract.

_____ The Proposer (if unable to meet the DBE goal of _____ %) is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

PROPOSER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

DBE PARTICIPATION SCHEDULE

The Proposer shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated above. The Proposer shall also furnish the name and telephone number of the appropriate contact person should the FRTA have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM

| Name Address | Contact Name and Telephone Number | Participation \$ Of Total Contract Value | Description of Work To Be Performed | Category (Indicate MBE or WBE) |
|-----------------|--------------------------------------|---|--|-----------------------------------|
| | | | | |

PRIME COMPANY NAME: _____

NAME OF CONTACT PERSON: _____

TELEPHONE NUMBER: _____

DBE LETTER OF INTENT

FRANKLIN REGIONAL TRANSIT AUTHORITY
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION
(To be supplied if using DBE subcontractors)
LETTER OF INTENT

To: _____ (Name of Prime Contractor)

The undersigned intends to perform work in connection with this project as (check one):

☐ an individual ☐ DBE ☐ a partnership ☐ a joint venture

The Disadvantaged Business Enterprise status of the undersigned is confirmed

(a) On the most recent reference list of Disadvantaged Business Enterprises published by Massachusetts Supplier Diversity Office dated _____, or

(b) On the attached Disadvantaged Business Enterprise Identification Statement

The undersigned is prepared to perform the following work in connection with the above project, (Specify in detail particular work items or parts thereof to be performed):

The proposer/bidder is committed to utilizing the above named DBE firm for the work described above. The estimated dollar amount if this work is \$ _____.

You have projected the following commencement date for such work and the undersigned is projecting completion of such work as follows:

| <u>Items</u> | <u>Projected Commencement Date</u> | <u>Projected Completion Date</u> |
|--------------|--|--------------------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

The above work will not be sublet to a non- Disadvantaged Business Enterprise at any tier. The undersigned will enter a formal agreement for the above work conditioned upon an execution of a contract with FRTA.

Date _____

Name of Disadvantaged Business Enterprise

(Proposer shall submit letter of intent for each DBE subcontractor.)

DBE CLAUSES

STATE OF _____ Date: _____
COUNTY OF _____ S.S.

The undersigned being duly sworn, deposes and says that he/she is the

(Sole owner, partner, president, treasurer or other duly authorized official of a corporation)

of _____ (Name
of DBE)

certifies that since the date of its certification by

(SOMWBA or out-of-state certification agency)

the certification has not been revoked nor has it expired nor has there been any change in
the minority status of

(Name of DBE)

(Signature and Title of Person Making Affidavit)

Sworn to before me this _____ day of _____, 20____

Notary Public: _____

My commission expires: _____

NOTE: The Proposer must attach the DBE's most recent certification letter or document to this affidavit.

ATTACHMENT D

RFP #2016-0415

Construction Services for Parking Lot Expansion

GENERAL INFORMATION FORM

W9 FORM

| GENERAL INFORMATION FORM | | | |
|---|------------|------|--|
| Name of Organization: | | | |
| Address: | | | |
| | | | |
| | | | |
| | | | |
| Telephone: | | FAX: | |
| Authorized Contact: | Name: | | |
| | Title: | | |
| | Telephone: | | |
| Organization is (check appropriate block): <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Association </div> <div> <input type="checkbox"/> Joint Venture <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Public Agency </div> <div> <input type="checkbox"/> Quasi-public Agency <input type="checkbox"/> Other (explain) </div> </div> | | | |
| Acknowledgment of received Addenda No(s): | | | |
| <p>The undersigned, being cognizant of the pages, documents and attachments concerned herewith agrees to provide the FRTA with the services described in the Invitations for Bids dated July 13, 2016. The stated Bid shall be firm for 60 days from the due date of this document.</p> <p>The Contractor agrees to comply with contractual requirements pertaining to Equal Employment Opportunity, Fair Employment Practices, DBE Participation goals, and other Federal and State requirements.</p> | | | |
| The Proposer hereby affirms that this Proposal is genuine, not a sham or collusive, and is not made in the interest of any person not therein named. | | | |
| | | | |
| Authorized Signature | | Date | |

W 9 FORM - Taxpayer Identification Number (TIN) and Certification

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box:

☐ Individual/Sole proprietor

☐ Corporation

☐ Partnership

☐ Other

Address (number, street, and apt. or suite no.)

City, State, and ZIP Code

Taxpayer Identification Number (TIN)

Enter your TIN on the appropriate line below. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the IRS instructions on filling out Form W-9. For other entities, it is your employer identification number (EIN).

SSN: _____

EIN: _____

Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: a) I am exempt from backup withholding, or b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of U.S. person: _____

Date: _____

ATTACHMENT E

RFP #2016-0415

**Construction Services for Parking Lot Expansion
BID/PROCUREMENT PROTEST POLICY**

Bid/Procurement Protest Policy

The Franklin Regional Transit Authority (FRTA) will make every effort to issue requests for proposals (RFP/Qs), requests for qualifications (RFQs), and invitations to bid (IFBs) and to make awards relative to those procurements in a manner that will not spark a protest. If, however, a proposer or bidder, herein after called the "Protester", wishes to protest either the solicitation or the award of the procurement, the Protester may file a protest as described below.

Protests Prior to Award of Contract

Any Protester that desires to protest any aspect of the contents of a FRTA procurement solicitation (RFP, RFQ, IFB) must file a written statement of protest with the Administrator of the FRTA (hereinafter referred to as the Administrator) within fifteen (15) business days prior to the deadline date specified for submitting a response to the procurement. The written protest should be as specific as possible in describing the Protester's objection to the procurement solicitation and include any supporting documentation. In this written protest, the Protester may request a hearing with the Administrator.

The Administrator will schedule any requested hearing to be held within ten (10) business days of receipt of the written protest.

The Administrator will issue a response in writing, within five (5) business days of receipt of the protest or following a hearing on the protest.

If a protest has been filed in accordance with the procedure specified hereinabove, the FRTA will not make a procurement award pending a resolution of the outstanding protest, unless, in the sole judgment of the Administrator:

- the items to be procured are urgently required
- delivery or performance will be unduly delayed by the FRTA's failure to make the award as scheduled
- the failure to make the procurement award will cause undue harm to the FRTA or interfere with the FRTA's fulfilling its responsibilities or obligations.

The protest will be considered outstanding until the Administrator has issued his response to the protest.

Protests received following the solicitation response due date will be considered only if they concern an issue, procedure, or other matter that could not have reasonably been protested by a proposer prior to the solicitation response due date; however, no protests about the solicitation will be entertained after ten (10) business days following the solicitation response due date.

Any protest may be withdrawn, in writing, prior to issuance of the Administrator's response.

Protests Subsequent to Award of Contract

1. Proposers may file a protest about the procurement subsequent to the award of the contract. Such protests may not pertain solely to the solicitation, except if the provisions of Item 5 above apply.

Protestors of the procurement contract award must file a written statement of protest with the Administrator within five (5) business days following receipt of the notice of the award.

The written protest should be as specific as possible in describing the Protester's objection to the procurement contract award to a competing proposer. In this written protest, the Protester may request a hearing with the Administrator.

The Administrator will schedule any requested hearing to be held within five (5) business days of receipt of the written protest.

The Administrator will issue a response in writing, within five (5) business days of receipt of the protest or following a hearing on the protest.

Depending on the timing of the protest relative to the commencement of work activities under the awarded contract, the Administrator may or may not suspend the awarded contract while the protest is outstanding. The contract award will not be suspended if, in the sole judgment of the Administrator, the contract must be enforced because:

- the items to be procured are urgently required
- delivery or performance will be unduly delayed by the FRTA's failure to make the award as scheduled
- the failure to make the procurement award will cause undue harm to the FRTA or interfere with the FRTA's fulfilling its responsibilities or obligations.

The protest will be considered outstanding until the Administrator has issued his response to the protest.

Further Right of Appeal

Proposers protesting procurements supported with funds from the Federal Transit Administration (FTA) may, pursuant to FTA Circular 4220.1D and any applicable Federal Law, file a protest with the FTA after exhausting the following of FRTA protest procedures.

Judicial Remedies

The FRTA recognized that, under certain circumstance, the Protester may be entitled to seek the following judicial remedies:

- An action for monetary damages, where and if applicable, in the Court of Massachusetts
- An action for injunctive relief, as well as money damages, where and if applicable, in the Courts of Massachusetts
- Actions within the Federal Courts as a result of the pursuit of the remedies referred to in "Further Right of Appeal" hereinabove, as well as actions for money damages and/or injunctive relief, where and if applicable.

Notices

In each case where notice is required herein to be given to a Protester, the FRTA will cause similar notice to be given to each other respondent to the procurement solicitation.

ATTACHMENT F

RFP #2016-0415

**Construction Services for Parking Lot Expansion
SAMPLE CONTRACT AGREEMENT**

CONTRACT FOR CONSTRUCTION SERVICES
BY AND BETWEEN
FRANKLIN REGIONAL TRANSIT AUTHORITY (FRTA)
AND
[CONTRACTOR]

This Contract by and between Franklin Regional Transit Authority (hereinafter called FRTA) a political subdivision of the Commonwealth of Massachusetts, established pursuant to Chapter 161B of the General Laws and [CONTRACTOR] (hereinafter called [CONTRACTOR]).

It is hereby agreed that:

[Contractor] will perform construction services for a parking lot expansion at FRTA's Regional Transit Center per the scope of work outlined in the attached Invitation for Bids and [Contractor's] Bid Proposal documents.

The project shall commence on the date signed by the last party to the contract and shall include copies of required Certificates of Insurance as outlined in the Invitation for Bids.

The FRTA will reimburse [Contractor] in the amount of [\$XXX,XXX] as outlined in the attached [Contractor] cost proposal. The FRTA will reimburse the invoice(s) provided by [Contractor] after receipt of an original invoice(s) and as the project has been completed according to the specifications. Payment(s) will be made to [Contractor] within 30 days of receipt of invoice(s).

Tina M. Cote, FRTA Administrator

Date

[Contractor]

Date

ATTACHMENT G

RFP #2016-0415

Construction Services for Parking Lot Expansion

WEEKLY PAYROLL RECORDS REPORT & STATEMENT OF COMPLIANCE FORM

ATTACHMENT H

RFP #2016-0415

**Construction Services for Parking Lot Expansion
PREVAILING WAGE SCHEDULE**