RESOLUTION 11-86  Adopted August 22, 2011

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO EXECUTE AN AGREEMENT WITH VOLUNTARY ACTION CENTER (VAC) FOR THE CONTINUED OPERATION OF A DEMAND-RESPONSE TRANSIT SYSTEM, OCTOBER 1, 2011 – SEPTEMBER 30, 2013.

WHEREAS, the provision of public transit services is essential to the transportation of persons in the DeKalb urbanized area; and the Urbanized Area Formula Grant Program (Title 49 U.S.C. Section 5307) makes funds available as of July 1, 2011 to help offset certain operating deficits of a system providing public transit service in urbanized areas; and,

WHEREAS, the Downstate Operating Assistance Program grant (30 ILCS 740/2-1) maintained by the Illinois Department of Transportation makes funds available as of July 1, 2011 to help offset certain operating deficits of a system providing public transit service in urbanized areas; and,

WHEREAS, as the designated Section 5307 grant recipient for the DeKalb urbanized area, the City is required by the Federal Transit Administration to select a third-party transit provider through a Competitive Proposal/Request for Proposals (RFP) process; and,

WHEREAS, the Federal Transit Administration and the Illinois Department of Transportation require a competitive selection process every five (5) years; and,

WHEREAS, the Voluntary Action Center of DeKalb County (VAC) presently provides demand-response transit services to the City of DeKalb, and is deemed to be best able to continue providing transit services to the DeKalb urbanized area during the period through which the RFP process is conducted; now,

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That the Mayor of the City of DeKalb be authorized and directed to execute an agreement with Voluntary Action Center for the period of October 1, 2011 through September 30, 2013, with three additional renewable one (1) year terms for service through September 30, 2016, for the continued operation of a demand-response transit system for the DeKalb urbanized area, a copy of which is attached hereto and made a part hereof as Exhibit “A”.

Section 2. That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor’s signature.
PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular meeting thereof held on the 22nd day of August, 2011, and approved by me as Mayor on the same day. Adopted by roll call vote: 7-0. Aye: Jacobson, Teresinski, Lash, Gallagher, Naylor, Baker, O'Leary. Nay: None.

ATTEST:

[Signatures]

STEVE KAPITAN, City Clerk

KRIS POVLSEN, Mayor
EXHIBIT A

Agreement

This Agreement, made and entered into this 9th day of September, 2011, between the City of DeKalb, a Municipal Corporation of the State of Illinois, hereinafter referred to as the “City” and Voluntary Action Center of DeKalb County, hereinafter referred to as the “Contractor”.

For and in consideration of the mutual covenants, and benefits hereinafter set forth, the City and the Contractor agree as follows:

SECTION 1. EFFECTIVE DATE, APPLICABLE REGULATIONS, SERVICE AREA, TERMINATION DATE, AND OPERATIONS.

1. **Effective Date.** The City does hereby grant to Contractor the right to operate a transit system on the behalf of the City from the 1st day of October 1, 2011 through 30th of September, 2013.

2. **Renewal.** Absent of termination by either party, the agreement will automatically renew on October 1, 2013 for the period through September 30, 2014; on October 1, 2014 for the period through September 30, 2015, and on October 1, 2015 for the period through September 30, 2016.

3. **Service Area.** The City does hereby authorize the Contractor to continue to provide transit services within the limits of the DeKalb Urbanized Area, as shown and attached hereto as Attachment “A”.

4. **Termination Date.**
   a. In the event the Contractor shall default in any of the material terms and provisions of this Agreement, the attached Service Plan or if its performance of the material services contemplated hereunder shall be determined inadequate, insufficient or improper, the City shall give the Contractor thirty (30) days written notification of such default, and shall have the right to terminate and cancel this Agreement by written notice should the Contractor not cure the default within 30 days of such notification.
   b. Standards for judging whether the Contractor’s service is adequate shall include but not be limited to such specific items as: ability to meet stated schedules of service, cleanliness of vehicles, courtesy of drivers, honesty in dealing with financial affairs, willingness to cooperate with a multi-provider system, and provision of monthly, quarterly, and annual reports in a timely manner.
   c. It is agreed that the Contractor shall have the right to terminate this Agreement upon giving sixty (60) days prior written notice to the City, except in the event that the City passes an ordinance regulating or taxing Contractor, in which case, Contractor shall have the right to
terminate this Agreement upon giving five (5) days prior written notice to the City.

5. **Operations.**

   a. The Contractor shall provide approximately 49,000 yearly vehicle service hours of demand-response transit service to the DeKalb urbanized area during a period beginning October 1, 2011 through September 30, 2013. The provided service during the term of this agreement shall be consistent with the services outlined in RFP 2011-004, attached hereto as Attachment “B”.

   b. The service will be provided during each month of the year, with service to be managed to allow for uninterrupted service throughout the contract year.

   c. Commencing with the first day of the term of this Agreement and continuing through the duration thereof, the Contractor agrees to furnish full and complete management, supervisory and operational services that are reasonably required for the public transit services contemplated by this Agreement.

   d. The Contractor shall furnish a resident manager with experience in the operation of a public mass transportation system in the DeKalb urbanized area.

**SECTION 2. CONTRACTOR’S GENERAL OBLIGATIONS**

The Contractor shall furnish the following management tasks in order to provide an efficient transit system.

**Services**

1. **Transportation Operation including:**
   a. Supervision of all transit personnel employed by the Contractor.
   b. Securing all insurance coverage required and handling all matters with insurance carriers.
   c. Direction and supervision of all accounting, bookkeeping, auditing, and purchasing related to this agreement and attached Service Plan in compliance with all regulations set forth by the City, the Illinois Department of Transportation, hereinafter referred to as “IDOT”, and the Federal Transit Administration, hereinafter referred to as “FTA”.

2. **Schedule Operations including:**
   a. Studying and recommending changes in operating schedules, headway frequencies, transfer methods, and other related transit operations.

3. **Employee Selection, Safety and Training including:**
a. Direction and supervision of the selection of all transit personnel employed by the Contractor.
b. Direction and supervision of said employees’ training, conforming, whenever possible, to the best practices set forth by IDOT and the FTA.
c. Direction and supervision of safety programs, safety meetings, campaigns, and use of safety equipment for the Contractor’s personnel, conforming, whenever possible, to the best practices set forth by IDOT and the FTA.

Payment

1. Payment shall be made to the Contractor following the end of each calendar month, upon receipt of an itemized bill, including documentation of hours of service provided. Invoices shall be submitted by mail or fax, and must be received by 4:00 p.m. on the last Friday of the month for payment for services in the previous month. For accounting purposes, individual invoices shall be issued for each individual grant for which payment is approved. Payment will be issued on the Friday following the Friday on which the invoice is received by the City of DeKalb.

2. Payments for service in June must be submitted by July 25 or the following business day. As DOAP funds lapse at the end of each year, failure to submit the final FY invoice prior to July 25 or the next business day will be construed as a forfeiture of payment.

3. Payment will be reimbursed at the rate of sixty-five percent (65%) of the per service hour vehicle cost of $74.25 as of October 1, 2011.

4. Subsequent Years. VAC may seek up to a maximum of a 10% increase per vehicle service hour for each subsequent year. If funds are not available, VAC may seek the percent increase available according to actual funding, and must seek City of DeKalb permission to reduce levels of service if existing funding is insufficient to maintain existing levels of service. The contractor must provide a written request and justification for the increase to the City. Vehicle Service Hour costs will be set by the City Manager on July 1 of each year of the contract.

Taxes

1. The City shall not assume any liability for any federal, state, or municipal taxes.

Grant Funds

1. The contract is contingent upon availability of funds received by the City pursuant to grants under Federal Section 5307 Public Transportation Program, hereinafter referred to as “5307”, managed by the Federal Transit Administration, hereinafter referred to as “FTA”, and the State of Illinois Downstate Operating Assistance Program, hereinafter referred to as “DOAP”, managed by the Illinois Department of Transportation, hereinafter referred to as “IDOT”.

Contract for Transit Service
DSATS114-11
2. Reimbursement to the Contractor is limited to the maximum amount of 5307 transit grant funds and DOAP grant funds made available to the City of DeKalb over the life of the contract, less the amount of federal or state transit funds required by the City to recoup its expenses associated with administering said grant or obligated by the City through other contracts. In the event that said funds are not made available from the Federal government or the State of Illinois, the contractor shall not look to the City to recover any loss or cost incurred.

3. Payment of individual invoices shall not exceed the total amount of funds already received by the CITY from the 5307 and DOAP grant funds. Should payments for services provided be delayed due to delays in payment from grant sources, the Contractor shall be allowed to temporarily reduce services and/or increase fares until grant reimbursements are received.

4. Any changes in services or fares must be approved by the City and include a public hearing conforming to the DeKalb-Sycamore Area Transportation Study, hereinafter referred to as “DSATS”, Public Participation Plan, advertised in the local newspaper, with all required FTA clauses included.

5. The City Manager will set an estimate of the maximum contract amount as of July 1 each year. The contractor will be notified quarterly as to the balance of the contract.

Indemnification

1. The Contractor shall indemnify and hold harmless the Illinois Department of Transportation; the Federal Transit Administration; the City, its City Council and members, employees, officers, agents, and representatives; and the DSATS member agencies Technical Advisory Committee, except representatives on board which are staff of the Contractor, and Policy Committee members from and against any and all claims, demands, lawsuits, losses, damages, injuries, and liabilities, including attorneys’ fees, costs and expenses, incurred by the City in connection with the performance of the contract awarded hereunder, whether or not caused or contributed to, by, or on account of any acts or omissions on the part of the contractor, or its officers, employees, agents or servants.

2. City hereby covenants and agrees to hold the Contractor harmless from and against any and all such costs, expenses, damages, liabilities, losses and claims which are the obligation and responsibility of the City or which may arise or result by reason of the negligence of the City.

Insurance

1. The Contractor shall purchase and maintain continuously, throughout the term of the contract, insurance coverage meeting all the following requirements.
   a. Worker’s Compensation and Employer’s Liability: Statutory Limits
   b. General Liability: $1,000,000.00 per occurrence Combined Single Limit (Bodily Injury & Property Damage), $2,000,000.00 aggregate, including Contractual Liability specifically referencing this contract.
c. **Automobile Liability**: $1,000,000.00 per occurrence Combined Single Limit (Bodily Injury & Property Damage), $2,000,000.00 aggregate, including Hired and Non-Owned Autos Coverage and Medical Payments Coverage of $10,000.00 per person, $50,000.00 per occurrence. The Provider agrees that it will maintain or cause to be maintained, for the duration of the Agreement, such policies of insurance as will protect the Provider, the City, the Department, the Federal Government, and the FTA. The Provider shall be responsible for the payment of any deductibles required by the insurance policies.

2. Each of the above coverages shall be written by a company with a minimum rating of “A” by the Best’s Insurance Rating Guide. All coverages must be written by companies that are admitted, licensed carriers in the State of Illinois.

3. The City of DeKalb City Council, the Illinois Department of Transportation, and the Federal Transit Administration shall be named as an Additional Insured on each of the above policies.

4. A Certificate of Insurance evidencing the required coverages and this Additional Insured Endorsement shall be furnished to the City prior to the first day of service. Such insurance shall be cancelable or modifiable only on written notice by registered mail to the City at least thirty (30) days in advance of any changes. The City reserves the right to require the Contractor to furnish a copy of its insurance policy for examination prior to the first day of service.

**Disadvantaged Business Enterprise**

1. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements will be considered a material breach of the contract award pursuant to this solicitation, which may result in the termination of the contract or such other remedy as the City, deems appropriate.

**Compliance with State and Federal Laws**

1. This contract is subject to all requirements associated with the receipt of Federal financial assistance from the FTA and IDOT. This procurement hereby incorporates, by reference, all standard terms and conditions associated with financial assistance contracts award by either agency.

2. The following provisions include, in part, certain Standard Terms and Conditions required by the Illinois Department of Transportation (IDOT), whether or not expressly set forth in the contract provisions found herein.

3. All contractual provisions required by IDOT and the FTA, as set forth in the FTA Circular 4220.1F, Revision 3, dated February 15, 2011, and the FTA Master Agreement “FTA MA(17)” and all subsequent revisions are hereby incorporated by reference. Anything to the contrary notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in any Agreement arising from this solicitation.
4. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of DeKalb request that would cause the City to be in violation of the FTA terms and conditions.

5. The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation to those listed directly or by reference herein, as they may be amended or promulgated from this time during the term of this contract. The contractor’s failure to so comply shall constitute a material breach of this contract.

6. In addition, the contractor shall adopt and enforce a drug-free policy as outlined below. The purpose of this policy is to assure worker fitness for duty and to protect our employees, passengers, and the public from the risks posed by the misuse of alcohol and use of prohibited drugs. This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. The Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR part 655 that mandate urine drug testing and breath alcohol testing for safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation (DOT) has also published 49 CFR part 40, as amended that sets standards for the collection and testing of urine and breath specimens. In addition, the Federal government published 49 CFR Part 29, “The Drug-Free Workplace Act of 1988”, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA. This policy incorporates those requirements for safety-sensitive employees and other when so noted.

7. The contractor acknowledges and affirms that they will comply with the provision of all applicable state and federal laws, including but not limited to Section 2-105A of the Illinois Human Rights Act.

SECTION 3: DESCRIPTION OF SERVICES

Overview

1. Services will be provided with City of DeKalb vehicles, which are leased to the provider. The provider is subject to all terms of the (separate) lease agreement. The provider is responsible for providing storage and maintenance space for these vehicles.

Description of Services

1. The Contractor shall provide the following flexible routes, based upon descriptions provided in the Transit Services DSATS RFP 2011-004, pages 2-3: Green, Blue, and Kishwaukee route deviation lines, and TransVAC and Med-VAC door-to-door paratransit service.
Description of Planned Services

Planning efforts since 2006 have identified possible service improvements and expansions. These services are proposed, and there is no timeline for implementation. The Contractor may be asked to provide these services at some point during the contract.

1. Restructuring of Existing Bus Routes: The 2010 Transit Needs Analysis study suggested looping the Green and Blue lines to eliminate the need to transfer between with two routes with long transfer times. The study also suggested restructuring the Kishwaukee line to better enhance the two other lines.

2. Service to Cortland: Cortland officials have indicated some interest in expanding route deviation service to Cortland. If interest continues, DSATS, Cortland, and VAC staffs may work together to identify how such a service could be implemented.

3. Elburn Shuttle: This route would provide several daily trips (seven days a week) to and from the Metra Station in Elburn, Illinois. This trip is anticipated to be fifteen miles each direction. DSATS and VAC staffs would work together to identify the number of trips and the size of buses needed to implement this service.

4. Weekend Service: VAC and DSATS staffs would work together to identify the feasibility of implementing weekend route deviation service in the DeKalb metropolitan region.

5. Transit Facility: The 2010 Transit Facility Study identified that the existing VAC transit facility has reached its capacity and advises a new facility should be constructed to serve the existing and future needs of transit in the DeKalb region. VAC and DSATS staffs should work together to start the process of construction of a new facility.

Persons with Disabilities

1. The contractor shall conform to all requirements of the Americans with Disabilities Act and the U.S. Department of regulations pursuant thereto in the provision of service.

2. The contractor shall ensure that no person, on the basis of disability, is denied access to BITS services.

3. The contractor shall transport all special needs clients, including persons with disabilities, provided the client uses a “common wheelchair” pursuant to the definition contained in the U.S. Department of Transportation regulations (49 CFR part 37.3).

4. The contractor shall use securement systems and any other safety means necessary to ensure that all common wheelchairs transported are properly secured.

5. The contractor may contact the passenger or their representative and request to provide technical advice as to whether the device conforms to ADA guidelines.

6. If a mobility device does not meet common wheelchair guidelines, the Contractor may refuse to transport the device. The Contractor shall immediately notify the City in the event of a refusal of service due to non-common chair, and in its
monthly report to the City, identify the passenger and non-conforming specification.

7. Pursuant to 49 CFR part 37, the contractor may request, but cannot require, the passenger transfer from a non-common chair, to a chair provided by the contractor for boarding/alighting. The contractor may request, but cannot require, the passenger transfer from non-common or common wheelchair to a regular passenger seat for transit.

8. The contractor may be asked to provide ADA-Complementary paratransit in the event that the City of DeKalb or its partners provide fixed route service.

Trip Reservations and Scheduling

1. Reservations for demand response trips will be accepted from 8:00 A.M. until 4:00 P.M., Monday through Friday. The contractor will schedule trips on a “next-day” basis, meaning that a reservation placed any time prior to 4:00 P.M. the day before travel will be accepted.

2. The contractor is not obligated to accept same day reservations. However, in the event of vehicle availability, and in consideration of adverse impacts on existing scheduled clients, the contractor may periodically accept same day reservations if there is system capacity and the same day trip will not unduly impact the travel time and schedule of existing clients.

3. Reservations will be accepted up to 30 days in advance of the day of requested travel. The contractor shall be permitted to accept reservations more than 30 days in advance of the day of travel if, for example, scheduling software permits such practices or it is within the general business practices of the contractor to do so.

4. In making reservations, patrons will be asked about special needs required for transit use (e.g., wheelchair, child restraint seats, etc.), and the contractor shall ensure that a properly equipped vehicle is available to meet the patron’s special needs at the time of reservation confirmation.

5. The contractor will schedule demand response trips on a first-requested, first scheduled basis without regard to trip purpose priorities. The contractor will keep the City informed of capacity concerns in demand response service provision.

6. The contractor may negotiate pick-up times with a client whose trip request cannot be accommodated at the requested time.

7. To assist the City evaluate long-range service planning and to assure that services provided by the City is comparable to persons with disabilities as it is to persons without disabilities, the contractor shall maintain written trip denial lists. The list shall include the name of the client, date and time of the trip request, disability status of the client, and the reason for the trip denial. A report showing these denials will be submitted to the City of DeKalb on a quarterly basis.

8. Subscription trips, or standing orders, are permissible. The contractor will keep data and statistics on the extent of subscription trips and any adverse impact on scheduling that subscription trips may cause in the availability of services to casual use clients.

9. The contractor shall not schedule trips or dispatch vehicles with standees. No standees shall be permitted on-board any system vehicles which are providing
dedicated paratransit or medical transit services. For route deviation routes, standees shall only be permitted on system vehicles that have holding bars and other safety devices required to safely transport standees.

Dispatching

1. The contractor shall maintain a base of operations at 1606 Bethany Rd. in Sycamore, IL or at another approved location for project administration, maintenance of system vehicles, and as the location for dispatching.
2. The contractor will maintain two-way communication with all system vehicles.
3. Dispatching staff and vehicle operators shall be trained in radio communication protocols consistent with FCC and industry standards.
4. A driver’s handbook shall be provided by the contractor to each driver indicating specific road procedures, accident and incident procedures, and instruction to drivers on how to communicate no-shows, late pick-ups, and situations where a client must be entrusted to the care of a guardian and the designated guardian is not at home for the afternoon or return trip drop-off.
5. The handbook should also contain all needed information for drivers to operate the Mobile Data Computers and associated trip scheduling software purchased by the City for the contractor to log all tour completion times, total number of passengers on each vehicle trip/tour, daily vehicle mileage, vehicle utilized, passengers (by name) transported, and fares collected and other pertinent information deemed necessary by the City. For any vehicle where there is no mobile data computer or the computer is inoperable, the driver should manually log all required information.
6. Each driver should have their own unique account that they shall logon and logoff from the mobile data computer each day. Should a driver be maintaining a manual log, the daily log should be signed by the driver that day.
7. The contractor shall retain all written and electronic driver logs throughout the period of performance under this contract and shall permit the City to inspect these logs at any time.

On-Time Performance

1. In order to be considered "on-time" in demand response door-to-door operations, a scheduled vehicle will be at the pickup point from between 5 minutes prior to 15 minutes after the scheduled pickup time promised to the client. Clients must be ready, therefore, throughout this 20-minute “ready” period.
2. The contractor will maintain data on the percent of all trips in demand response door-to-door mode provided “on-time”.
3. In the event that a client is not at the scheduled pickup point between the designated ready times, the driver shall be required to wait at least five (5) minutes before departing the location. Drivers shall radio dispatch and have dispatch call the client’s home (or other location) to attempt to verify the client’s plans to make the trip. In the event that a patron does not make their intent known to the driver within the five-minute period, the driver shall assume a no-show has
occurred and the trip will be treated in accordance with the no-show policy. In
the event that a driver reaches a no-show determination, the driver must inform
the dispatch staff of the no-show occurrence immediately.

4. For all route deviation lines, the route shall be considered “on-time” if it is not
more than ten (10) minutes later than the posted schedule time. The contractor
will maintain data on the percent of all trips in route deviation mode provided
“on-time” and how often a route was deviated to provide route deviation service.

5. The contract shall provide an annual “on-time” performance report including the
on-time performance for each mode, and frequency that route deviations are used
on route deviation routes. This report should be provided at the end of each fiscal
year. This information shall also be available on demand as requested.

Complaints

1. The Contractor and City staff shall work together to revise the existing
complaint/incident monitoring system. This system should monitor all
complaints, including but not limited to on-time performance, driver/contractor,
Title VI, ADA, and Disadvantaged Business Enterprise complaints. The
monitoring process should clearly identify the required monitoring duties of both
the City and Contractor staffs.

2. In order for complaints to be considered valid, the name, address, and telephone
number of the complaining party must be provided. Generally, anonymous
complaints will be dismissed; however, investigations may be warranted based
upon anonymous complaints, at the complete discretion of the contractor. The
City and Contractor’s staff shall hold all complaints received in strict confidence.

3. The contractor’s staff will investigate and resolve all complaints for which the
contractor is identified as the responsible investigator. A written response will be
provided to the complainant. The written response will contain the following
information as appropriate:
   a. A copy of the initial complaint;
   b. If the problem has been resolved, a description of the resolution;
   c. If the issue is still being investigated, an estimate of the additional time
      needed for further investigation;
   d. If the issue cannot be resolved, documentation must be provided as to why the
      issue cannot be resolved;
   e. If the investigation reveals that the complaint has no merit, documentation
      must be provided.

4. A record of complaints shall be maintained and submitted to the City mailed,
email, or faxed to identify City staff on a quarterly basis and on demand as
needed.

Contractor Staff

1. General Manager
a. The contractor shall designate a Resident Manager who shall oversee the day-to-day operation of the service. This position shall be a full-time, 1.0 FTE position, within the contractor’s organization.

b. The Contractor shall be free to assign other non-project related duties to the Resident Manager during his/her tenure on the project. These duties, however, shall be secondary to the principal role of managing this service and shall not interfere in any manner with the duties of managing the scope of services described herein.

c. During periods of personal leave (e.g., vacation leave, sick leave, etc.), the contractor shall designate other personnel who will perform the duties of the Resident Manager in his/her absence.

d. The Resident Manager shall also represent the contractor on the DSATS Technical Advisory Committee. The resident manager or authorized alternative shall attend at least fifty percent (50%) of all Technical Advisory Committee meetings scheduled each year.

2. Dispatch and office staff
   a. The Contractor shall supply a sufficient number of employees to staff the office at all required times and perform all necessary tasks associated with the service. The Contractor will be responsible for training these employees and making sure that all program policies and procedures are understood and followed.
   b. During all times when vehicles are on the road providing service under this contract, the Contractor will staff the office with at least one person trained to perform radio-dispatching functions, answer telephones, and respond to emergencies.

3. Driver Qualifications and Training
   a. The Contractor agrees that it will not allow any person to drive a vehicle whose moral character is not of the highest level, or whose conduct might in any way expose any client to any impropriety of work or conduct whatsoever, nor shall the Contractor allow any person to drive a vehicle who is not at the time in a condition of mental and emotional stability. The responsibility for hiring and discharging personnel in respect to all of the foregoing shall rest entirely upon the contractor, and the contractor agrees that it shall not enter into agreement or arrangement with any employees, persons, groups or organizations which may in any way interfere with the contractor's ability to comply with this requirement.
   b. The selected Contractor shall screen all driver candidates to ensure that the following qualifications are met:
      i. no more than one (1) moving violation during the last three (3) years prior to application for this program;
      ii. no moving violations within the last 12 months;
      iii. if license has ever been suspended, applicant must have five (5) subsequent years with no violations;
      iv. if license has ever been revoked, applicant shall not be eligible for employment;
v. Under no condition will an applicant be accepted as a driver for this program if (1) he/she has been convicted of a felony or (2) and/or has been convicted of a drug or alcohol offense.

c. Nothing in these Contract Documents shall inhibit the Contractor's right to negotiate alternative employment conditions.

d. All drivers must receive the following initial training through programs approved by the City and show proof of successful completion of the following training:
   i. first aid and CPR;
   ii. passenger assistance techniques (PAT);
   iii. blood borne pathogen/biohazard handling;
   iv. behind the wheel (defensive driving) training — minimum 12 hours, including classroom instruction; and
   v. Sensitivity training — minimum 8 hours classroom and 4 hours "hands-on" (including passenger assistance, loading, and tie-down training).

e. Drivers will receive ongoing training in areas such as defensive driving, rider satisfaction, sensitivity training, etc. on a recurring basis.

4. All staff employed by the contractor in fulfilling this agreement shall be considered employees of the contractor and not the agents, servants or employees of the City.

Reporting Requirements

1. The selected contractor will be responsible for implementing a record keeping and reporting system. This system will be compliant with National Transit Database and IDOT reporting requirements. The Contractor will be responsible for providing any information required to the City. With permission of the City of DeKalb, the Contractor may file reports directly with the oversight agency, but will still need to provide copies to the City.

2. The Contractor will be responsible for properly maintaining separate records and summaries for this service as deemed necessary by the City. Monthly invoices shall be supported by a report detailing the following:
   a. Total one-way passenger trips;
      i. Total route deviation passenger trips
      ii. Total demand response trips;
   b. Total no-shows;
   c. Total vehicle miles;
   d. Total vehicle hours;
   e. Total vehicle revenue miles;
   f. Total vehicle revenue hours;
   g. Number days of service;
   h. Total accidents;
   i. Total breakdowns;
   j. Number of and nature of complaints
   k. Trip denials to ADA certified individuals
   l. Other Reporting Statistics that may be required by ILDOT, FTA.
SECTION 4: GENERAL TERMS AND CONDITIONS APPLICABLE TO THIS CONTRACT

Access to Record Pertaining to this Project

1. The Contractor shall agree to give FTA, the Comptroller General of the United States, and IDOT, through any authorized representative, access to and the right to examine all records, books, papers or documents related to this contract; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

Illinois Department of Transportation Regulations

1. The Contractor agrees to conform to all rules and regulations pursuant under Article II of the Illinois Downstate Public Transportation Act, (30 ILCS 740/2-1 et seq.,) and IDOT’s implementing regulations thereunder (92 Illinois Administrative Code Part 653)
2. The Contractor also agrees to conform to all additional regulations and provide all required information for supplemental forms included in the annual Downstate Transportation Assistance Program contracts between IDOT and the City.
3. The Contractor agrees to have an audit performed annually conforming to all audit regulations required by IDOT and the FTA.

Federal Transit Administration Regulations

1. The Contractor agrees to conform to all rules and regulations pursuant under The Urbanized Area Formula Funding program (49 U.S.C. 5307), with guidance provided in the Third Party Contracting Guidance Circular FTA C 4220.1F Rev. 3, dated 2/15/2011 et. al., the FTA Master Agreement and the FTA Best Practices Manual, whether explicitly stated herein or inferred.
2. All FTA required contract clauses and statutory language are included with this contract in Attachment “C” DSATS / City of DeKalb FTA Required Clauses and Certifications, where applicable, shall be strictly enforced.

Termination of Contract

In addition to all federal regulations identified in Section 21 “Termination” in the DSATS / City of DeKalb FTA Required Clauses and Certifications, the contractor shall agree to the following regulations on Termination of Contract:

1. Termination for Convenience
   a. The City may, at any time upon 30 days written notice to the Contractor, terminate the whole or any portion of the work for the convenience of the City. Said termination shall be without prejudice to any right or remedy of the City provided herein. In addition, in the event this agreement has been terminated due to the default of the Contractor, and if it is later determined that the Contractor was not in default pursuant to the provisions of this
agreement at the time of termination, then such termination shall be considered a termination for convenience pursuant to this paragraph.

b. Payment
   i. In the event that the City terminates this agreement for the convenience of the City, the City shall only be liable to the Contractor for those costs reimbursable to the Contractor plus a mark-up of ten percent on the actual fully accounted cost recovered pursuant to this paragraph. In the event that it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. In the event of termination for the convenience of the City, the City shall pay the Contractor the following amounts determined by the City Council:

   • An amount for supplies, services, or property accepted by the City for which payment has not previously been made. The price to be paid for these items shall be equivalent to the aggregate price for such supplies or services computed in accordance with the price specified in this agreement appropriately adjusted for any saving of freight or other charges; and

   • The total of:
     o The costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to supplies or services previously paid;
     o The costs of settling and paying claims arising pursuant to the termination of the work under said contracts or orders which are properly chargeable to the terminated portion of the contract (exclusive of the amounts paid or payable on account of completed items or equipment delivered or services furnished by a subcontractor or vendor prior to the effective date of the notice of termination, which amounts shall be included in the costs payable pursuant to paragraph (i); and
     o The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonable and necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this agreement.

c. Payment Limitations
   i. In the event of termination for the convenience of the City, the total sum to be paid to the Contractor shall not exceed the contract price as
reduced by the amount of payments otherwise made, by the contract price for work not terminated, and as otherwise permitted by the contract.

2. Cost to Cure
   a. If the City terminates the whole or any part of the work pursuant to this Agreement, then the City may procure upon such terms and in such manner as the City Council may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the City for any excess costs for such similar supplies or services. The Contractor shall continue the performance of this agreement to the extent not terminated hereunder.

3. Attorney’s Fees
   a. Should the Contractor default pursuant to any of the provisions of this Agreement, the Contractor and its surety shall pay to the City of DeKalb such reasonable attorney’s fees as the City of DeKalb may expend as a result thereof and all costs, expenses, and filing fees incidental thereto.

4. Contractor Responsibilities Under Termination
   a. After receipt of a notice of termination including the end of the agreed upon contract period from the City and except as otherwise directed by the DSATS Director, the Contractor shall:
      i. Stop work under the contract on the date and to the extent specified in the notice of termination;
      ii. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the agreement as is not terminated;
      iii. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
      iv. Assign to the City in the manner, at the times, and to the extent directed by the DSATS Director, all of the rights, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the City of DeKalb shall have the right, at its discretion, to settle or pay any and all claims arising out of the termination of such orders or subcontracts;
      v. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the DSATS Director, to the extent the DSATS Director may require, which approval or ratification shall be final for all purposes;
      vi. Use its best efforts to sell in the manner, at the times, to the extent, and at the prices directed or authorized by the DSATS Director, any property described in Section vi of this paragraph, provided, however, that the Contractor shall not be required to extend credit to any buyer and further provided that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to the Contractor pursuant to this agreement.
      vii. Complete performance of such part of the work as shall not have been terminated by the notice of termination;
viii. Take such action as may be necessary, or as the DSATS Director may direct, for the protection and preservation of the property related to the agreement which is in the possession of the Contractor and in which the City has or may acquire an interest.

ix. Return all equipment and software belonging to the City in the manner, at the times and to the extent directed by the DSATS Director and to return equipment in good working and mechanical condition, reasonable wear and tear excepted.

Signed by:

Tom Zucker  8/29/11
Executive Director
Voluntary Action Center

Kris Povlsen  9/9/11
Mayor
City of DeKalb

Witnessed by:

Steve Kapitan  9/9/11
City Clerk
City of DeKalb
INTRODUCTION

The City of DeKalb (hereinafter CITY) is seeking proposals from transportation providers (hereinafter CONTRACTOR) interested in providing a deviated route/demand-response transit service within the urbanized area within DeKalb County, Illinois, namely the City of DeKalb, the City of Sycamore, and the Town of Cortland. Service to/from rural DeKalb County is not included in this Contract. Service shall begin on or about October 1, 2011 and end September 30, 2013. Based on funding and mutual agreement of the CITY and the CONTRACTOR, the agreement period may be extended for up to three additional twelve-month periods. The following timeline shall be in effect for this RFP:

- **06/15/11**: RFP Advertised and Distributed
- **07/13/11**: All questions about RFP must be submitted to DeKalb
- **07/20/11**: All questions submitted to us must be answered
- **08/01/11 2:00 PM**: Public Opening of all submissions
- **08/03/11 Noon**: Review all proposals to identify any missing elements or clarifications on submittals
- **08/08/11 Noon**: All responses to missing elements or clarifications must be received
- **08/08/11 01:15 PM**: TAC selection of Transit Provider
- **08/17/11**: Special Policy Committee to approve transit contract provider
- **08/22/11**: City of DeKalb COW – Selection of Transit Provider
- **09/12/11**: Approval of new Transit Contract
- **10/01/11**: New Contract Begins

**PROPOSAL SPECIFICATIONS**

1. The CONTRACTOR shall agree to provide a demand-response transit service within Illinois in the City of DeKalb, the City of Sycamore, the Town of Cortland, and the surrounding urban environs. Transit services are currently provided by the transportation division of the Voluntary Action Center (TRANSVAC/VAC). TRANSVAC will continue to provide service to DeKalb County under the Section 5311 Rural Public Transportation Operating Assistance Program. The following routes are provided:

   a. 2 Blue Line route deviation routes
   b. 2 Green Line route deviation routes
   c. 17 origin to destination demand response "routes"
d. 8 origin to destination MedVAC demand response "routes" are possible each day. Some days fewer than eight (8) are in service, some days all eight (8) are in service.
e. 1 Kishwaukee College route deviation route

ROUTE DESCRIPTION:

A. Green Line Bus Route
TRANSVAC currently operates the Green Line Bus Route in DeKalb. The route begins at 7:00 a.m. and finishes at 9:00 p.m., Monday through Friday. The Green Line has one-hour headway and operates a vehicle with a minimum capacity of fourteen (14) persons during non-peak hours and minimum of twenty-two (22) during peak hours. The alignment is attached as Exhibit A. Note that the Green Line is deviated route service, thus the alignment is approximate. Modifications of the existing route to improve timeliness and services may be proposed. Any modifications must be reviewed and approved by the affected municipalities and organizations and go through a public comment process.

B. Blue Line Bus Route
TRANSVAC currently operates the Blue Line Bus Route in Sycamore. The route begins at 7:00 a.m. and finishes at 9:00 p.m., Monday through Friday. The Blue Line has one-hour headway and operates a vehicle with a minimum capacity of fourteen (14) persons during non-peak hours and minimum of twenty-two (22) during peak hours. The alignment is attached as Exhibit B. Note that the Blue Line is deviated route service, thus the alignment is approximate. Modifications of the existing route to improve timeliness and services may be proposed. Any modifications must be reviewed and approved by the affected municipalities and organizations and go through a public comment process. The total ridership for the combined Green and Blue lines was approximately 60,000 trips in 2010, with 9,000 revenue hours, and 169,000 revenue miles. These lines have experienced a 15% growth rate in 2010, and a 5% growth rate so far in 2011.

C. Paratransit Routes
The CONTRACTOR will be responsible for providing origin to destination demand response paratransit service. TRANSVAC currently operates this service by way of seventeen (17) regular routes. Routes are flexible in nature and change in response to who is riding on them. Hours of operation are 8 a.m. to 10:30 p.m. Monday-Friday. CONTRACTOR will be responsible for all paratransit service within DeKalb, Sycamore, and Cortland. TRANSVAC provided approximately 74,000 paratransit trips in 2010, with 25,000 revenue hours, and 360,000 revenue miles. In 2010, there was a slight increase in ridership, with a 4% growth rate so far in 2011.
D. MedVAC

This is medical transportation that is provided partially with volunteer drivers to locations outside of DeKalb County. Hours of operation are typically Monday-Friday from 6 a.m. to 6 p.m., however this is a demand-response service and some evening/weekend service must be accommodated. TRANSVAC currently provides up to eight (8) MedVAC routes. Some days there may not be sufficient demand to provide all eight routes. In Fiscal Year 2010, TRANSVAC provided approximately 4,700 trips, with 6,500 revenue hours, and 125,000 revenue miles. Ridership has remained about the same in the past two (2) years.

E. Kishwaukee College-DeKalb Area Bus Route

TRANSVAC currently operates the Kishwaukee College-DeKalb Area Bus Route. The route schedule is designed so that students may arrive for 8:00, 9:00, or 10:00 a.m. classes. Return trips originate at Kishwaukee College at 1:00 p.m., 2:00 p.m., and 3:30 p.m. The minimum passenger capacity for each run is 36 persons. There is also an evening route, arriving at Kishwaukee College at 6:00 p.m. and departing at 9:20 p.m. In 2010, TRANSVAC provided approximately 28,500 trips, with 2,000 revenue hours, and 33,000 revenue miles. This is a subscription service negotiated between TRANSVAC and Kishwaukee College. This line saw a 70% ridership increase in 2010, and a 35% ridership increase so far in 2011. TRANSVAC shall retain the rights to provide this service; however, as this route is eligible to receive DOAP grant operating assistance, the CONTRACTOR may negotiate with VAC and Kishwaukee College for the provision of this service. If the CONTRACTOR does provide this service, it must agree to conform to all rules and regulations provided herein. Any proposal submitted must include an indication whether or not the CONTRACTOR intends on negotiating with VAC to provide this service. The alignment for this route is attached as Exhibit C.

2. All vehicles must meet FMVSS Rollover and ADA requirements and meet all standards required by FTA regulations. The CONTRACTOR must delineate the type of vehicles including seating capacity, number of wheel chair slots, the length of vehicle, make and model, and any other information requested by the CITY. All existing equipment purchased by the City of DeKalb and leased to the current service provider shall be made available to the current service provider, should they choose to reimburse the City of DeKalb for the FTA assessed value of said equipment. Should the current service provider choose not to purchase said equipment, the equipment shall be made available for lease to a new CONTRACTOR, if selected.

3. Reservation and dispatching functions will be performed by the CONTRACTOR. The CONTRACTOR will be expected to provide computerized dispatching services at a level of service equal to or greater than the existing service provider. The
City of DeKalb purchased RouteMatch software on behalf of the current service provider and has installed Mobile Data Computers and associated RouteMatch software to track the locations of the entire bus fleet. All existing RouteMatch software, Mobile Data Computers, and supporting equipment purchased by the City of DeKalb and leased to the current service provider shall be made available to the current service provider, should they choose to reimburse the City of DeKalb for the FTA assessed value of said equipment. Should the current service provider choose not to purchase said equipment, the equipment shall be made available for lease to a new CONTRACTOR, if selected. Any costs to upgrade computer equipment to handle the current RouteMatch software will be the responsibility of the CONTRACTOR. Costs incurred to maintain software licenses and hardware maintenance shall be covered by the CONTRACTOR, however, most of the costs incurred can be offset by the DOAP operating assistance contract.

4. An economical and efficient base/vehicle communication system will be provided by and implemented by the CONTRACTOR.

5. The CONTRACTOR must demonstrate the ability to provide the following:

   a. An estimate of 145,000 one-way passenger trips during each year of the initial contract period, with an estimated 46,400 revenue hours, and 650,000 revenue miles.
   b. Service hours as delineated in Item 1 above and/or as modified based on user demand as specified by the CITY.
   c. Drivers must be trained for Federal Transit Administration (hereinafter FTA), Illinois Department of Transportation (hereinafter IDOT), and City of DeKalb compliance for origin to destination service, including training on safety and security.
   d. Vehicles must be maintained in accordance with the manufacturers recommended maintenance program. Maintenance personnel must be ASE certified, or contract with an ASE qualified maintenance provider. All vehicles shall be kept in compliance with all federal, state, and local safety requirements during the term of the contract.
   e. Accurate records of all vehicle maintenance must be kept and provided to the CITY upon request. Such records shall include a description of work performed, vehicles current mileage, person performed by, and any other relevant data. All records must also be provided to any FTA or State of Illinois (hereinafter STATE) representatives upon request.
   f. Maintain accurate record keeping of passenger counts by date, time, origin, destination and payment method. Such information shall be forwarded in a manner and time frame determined by the City for periods not to exceed 4 weeks.
g. CONTRACTOR will be expected to be an active participant in the FTA Triennial Review to ensure both the CONTRACTOR and the CITY are complying with all active regulations implemented by both the FTA and the STATE. The CONTRACTOR must also be an active participant in any specialized program reviews which the FTA or STATE may conduct to ensure more in depth compliance with all required regulations.

6. The City of DeKalb currently receives Downstate Operating Assistance Program (hereinafter DOAP) grants which reimburse the CITY for 65% of the allowable operating expenses, up to a set amount determined by the STATE in each year’s contract. These operating assistance funds will be provided to the CONTRACTOR on a monthly basis, as long as the CONTRACTOR continues to submit to the CITY the required monthly, quarterly, and yearly reports required by both the STATE and the FTA. The CONTRACTOR shall receive higher review points for demonstrating the ability to provide additional sources of local revenue. The financial plan should identify the revenue sources from which they can provide and anticipated funding from these sources.

7. The CONTRACTOR shall collect fares, tickets, vouchers and/or other authorized tender for travel. Such fares constitute a portion of the local match required of CONTRACTOR, and shall be retained by the CONTRACTOR.

8. The CONTRACTOR shall be responsible for billing individual insurance companies for eligible MedVAC trips. Such reimbursements constitute a portion of the local match required of the CONTRACTOR, and shall be retained by the CONTRACTOR.

9. The CONTRACTOR shall require and incur all cost(s) relative to safety-sensitive staff to drug and alcohol testing for FTA and STATE compliance.

10. The CONTRACTOR will comply with all appropriate FTA requirements as noted or inferred by responding to this RFP.

11. The CONTRACTOR will comply with all Illinois Downstate Operating Assistance Program (DOAP) requirements as noted or inferred by responding to this RFP.

12. At the time of RFP response, driver training schedules and preventative maintenance schedules, as appropriate, shall be submitted.

13. In the event that funds allow, the City may add or subtract routes, miles, and hours of operation. The rates per passenger, per mile, and/or per hour submitted with this proposal shall apply to any such modifications.

14. The CONTRACTOR shall be responsible for anticipated maintenance on all vehicles used in providing service to the City of DeKalb and the surrounding area.
The maintenance of all fleet vehicles must conform to the manufactures recommended maintenance schedule to maintain vehicle warranties. The maintenance shall be performed at a facility located within 5 miles of the City of DeKalb’s municipal boundaries. The CONTRACTOR may waive this item if CONTRACTOR can document that the costs of traveling to and from maintenance center beyond the allowed five miles are not included in the CITY’s cost. For vehicle repairs, which required specialized equipment not available in the CONTRACTORS maintenance facility, the CONTRACTOR shall sub-contract out services to a facility that conforms to all rules and regulations of the FTA and the STATE.

15. The CONTRACTOR shall designate a general manager for this contract. Such person will be responsible for all communications with the City. General Manager will serve as a member of the DeKalb-Sycamore Area Transportation Study Technical Advisory Committee and be required to attend at least fifty percent (50%) of regularly scheduled meetings.

16. The CITY shall agree to use a portion of its allocation of Annual FTA 5307 Urbanized Area funds for Capital and Operating Assistance for the improvement of transit services provided by the CONTRACTOR in the DeKalb metropolitan region. As a subrecipient of FTA grant funds, the CONTRACTOR must provide, but not limited to, the following:

a. As the City of DeKalb and the CONTRACTOR shall receive FTA 5307 grant funding, the CONTRACTOR must conform to all rules, regulations, and procedures identified in the FTA Circular 4220.1F Rev. 3, February 15, 2011 (link to the FTA Circular and other information can be found on the FTA website at: http://www.fta.dot.gov/funding/grants_financing_6036.html). CONTRACTOR should be familiar with all aspects of FTA regulations, including Triennial Reviews. More information about the whole FTA grant process can be found at: http://www.fta.dot.gov/grants_financing.html

b. RFP submission should include acknowledgement that CONTRACTOR is familiar with all FTA transit regulations and agrees to conform to all regulations in the FTA C 4220.1F Rev. 3, February 15, 2011 Circular (INCLUDE SIGNED COPY OF ADDENDUM A, agreeing CONTRACT can conform to all applicable FTA requirements). CONTRACTOR should also identify all FTA Triennial reviews they have participated in and the findings of each of those reviews.

c. When requesting the CITY to submit an FTA grant project for capital projects or operating assistance funds, which benefit the CONTRACTOR, the CONTRACTOR shall provide for each project a cost/benefit analysis,
independent cost estimates, and any other information required by FTA for procurement purchases.

d. Within the first six (6) months of award of contract (unless otherwise noted), the CONTRACTOR shall submit the following plans and policies:

   i. Financial Statements for the past three years (should be submitted with contract proposal);

   ii. A three (3) year Capital and Operating Financial Plan (should be submitted with contract proposal);

   iii. A comprehensive maintenance plan developed by the CONTRACTOR, which addresses all FTA regulations (until new maintenance plan is submitted, the existing maintenance plan developed by the CITY and VAC shall be in effect).

   iv. Procedures to handle any Disadvantaged Business Enterprise (DBE) complaints which may be received by CONTRACTOR (until new maintenance plan is submitted, the existing maintenance plan developed by the CITY and VAC shall be in effect).

   v. Title VI Plan, which includes service standards, policies to handle all Title VI complaints, and a Limited English Proficiency plan as required by FTA regulations (until new maintenance plan is submitted, the existing maintenance plan developed by the CITY and VAC shall be in effect).

   vi. Procedures for public comment on fare increases, and major services reductions or modifications (until new maintenance plan is submitted, the existing maintenance plan developed by the CITY and VAC shall be in effect).

   vii. Half-Fare plan for seniors and disabled. Current VAC policy does not charge seniors and disabled for ridership. Should CONTRACTOR wish to change this policy, it must go through a public meeting and public comment process.

   viii. The RFP must include: ADA compliance plan including public information materials describing all services provided; operating policies regarding ADA paratransit trips; performance reports including on-time pickups, denial rates, no-shows, etc.; procedures describing accessibility policies including stop announcements, lift use, etc.

   ix. If CONTRACTOR provides any Charter services, a supplemental plan must be submitted to show how the Charter portion of the business will be completely separated from all transit provided as part of this contract. The CONTRACTOR must prove that any capital equipment or operating assistance purchased with FTA grant funds will NEVER be used in the provision of Charter services.
x. If CONTRACTOR provides any school bus services, a plan must be submitted to show it conforms to all FTA regulations as they relate to School Bus service.

xi. CONTRACTOR shall agree to provide the monthly and annual report information necessary for CITY staff to submit their reports to the National Transit Database (NTD)

xii. CONTRACTOR agrees to provide all documentation supporting security expenditures.

xiii. CONTRACTOR must have a Drug-free workplace policy which conforms to all FTA rules and regulations (this must be submitted as part of contract proposal)

xiv. CONTRACTOR must have a Drug and Alcohol Program which conforms to all FTA rules and regulations (this must be submitted as part of contract proposal)

xv. CONTRACTOR must provide policy on how it handles Equal Employment Opportunity (EEO) complaints (this must be submitted as part of contract proposal);

17. The CITY shall agree to submit its annual Downstate Operating Assistance Program (DOAP) grant ((30 ILCS 740/) Downstate Public Transportation Act) which it will provide to the CONTRACTOR for reimbursement of up to 65% of all allowable operating expenses as defined by the DOAP contract, up to and not to exceed the total amount specified in the annual contract. As subrecipient, the CONTRACTOR shall agree to:
   a. Submit all required information needed to submit the DOAP required quarterly and yearly reports.
   b. The CONTRACTOR shall hire the City of DeKalb Auditor to perform their annual audit of their organization as it relates to this contract;
   c. All other DOAP regulations ((30 ILCS 740/) Downstate Public Transportation Act) not identified here.

SUBMISSION OF PROPOSALS

1. All proposals must be received by 2:00 pm on Monday, August 1, 2011.

2. Each proposal shall be submitted in accordance with the Proposal Format and Submission section. All proposals must be submitted in ink and shall be signed by the individual responsible for making proposals. Unsigned proposals will not be considered.

3. The proposal shall contain a minimum of three references from current or prior clients. The result of the reference checks may be used in the proposal evaluation.
4. The proposal shall be submitted in a sealed, opaque envelope and shall bear on the outside of the envelope the name and address of the CONTRACTOR and the RFP # found in the cover letter.

5. CONTRACTOR may attach separate sheets to the proposal for the purpose of explanation, exception, or alternative proposal.

6. Proposals may not be modified after submission. However, CONTRACTOR may withdraw proposals at any time prior to the date and hours set for proposal opening.

7. Staff will review all submissions for compliance to all requirements identified in this RFP. Should any element(s) be missing from submittal or clarification on any part of the submittal be needed, staff will provide CONTRACTOR three (3) business days to submit all missing elements not provided and clarification staff requests. No alteration of submitted proposal elements will be allowed.

8. CONTRACTOR must include any and all brochures, technical fact sheets, and required attachments with their proposals.

9. Proposals may be mailed or hand-delivered to:

   City of DeKalb  
   Attn: Brian Dickson  
   MPO Coordinator  
   223 S. Fourth St., Suite A  
   DeKalb, IL 60155

10. Proposals will be publicly opened at the above address at 2:00 pm on Monday, August 1, 2011.

PERIOD OF FIRM PROPOSAL

The offer in each proposal must be held open for a period of sixty (60) days following the last day for the submission of proposals.

REJECTION OF PROPOSALS AND WAIVER OF IRREGULARITIES

The City of DeKalb reserves the right to reject any and all proposals, to waive any and all irregularities, and to accept that proposal which it deems to be in the best interest of the City. Any such decision shall be considered final.

AWARD OF CONTRACT
All submittals shall be reviewed by DSATS staff and any DSATS TAC members who wish to participate (all VAC staff or VAC Board Members or alternates shall be prohibited from participation) and all responsible and responsive submittals shall be ranked based on criteria developed by DSATS staff (rankings and reviewing members shall be available to public upon awarding of contract). Any contract awarded as a result of this Request for Proposals must be approved by the DeKalb-Sycamore Area Transportation Study (DSATS) Policy Committee and the DeKalb City Council, subject to the concurrence of the Illinois Department of Transportation.

FULL PRICING AND CONTINGENCIES

The City shall hold the successful CONTRACTOR to the proposal price. Additional charges for any contingency discovered by the successful CONTRACTOR at any time following the opening of the proposals will not be considered for payment by the City. The City reserves the right to negotiate with any bidder for a better proposal price.

TAXES

The City is exempt from Federal Excise Tax and the Illinois Retailer’s Occupation Tax. Accordingly, by submitting a proposal, the CONTRACTOR acknowledges and affirms that the proposal does not include any amounts designated for those taxes. The City shall not assume any liability for any federal, state or municipal taxes.

GRANT FUNDS

The award of any contract or contracts is contingent upon availability of funds received by the City pursuant to grants under Section 5307 Metro Public Transportation Operating Assistance Program and the STATE Downstate Operating Assistance Program (DOAP).

In Fiscal Year 2010, the City of DeKalb was allocated approximately $850,000 under Section 5307. The City anticipates, but is not guaranteed, receiving similar allocations in future years. Of this money, up to ten percent (10%) may be retained by the City of DeKalb for administrative costs. The City of DeKalb retains the sole right to program funds.

The City of DeKalb was allocated $2,422,400 in DOAP funds in fiscal year 2011. The City has received an annual 10% increase in these funds, however, annual increases are subject to the STATE budget process, and therefore annual increases or entire funding of program can be subject to change.

The City is obligated to provide payment though the end of the contract year, subject to the availability of said funds. In the event that said funds are not made available in a
timely manner to the City from said or other federal or state sources, the CONTRACTOR shall not look to the City to recover any loss or cost incurred.

INDEMNIFICATION

The successful CONTRACTOR shall indemnify and hold harmless the State of Illinois; the Federal Government; the DeKalb-Sycamore Area Transportation Study staff, Technical Advisory Committee members, and the Policy Committee members; the CITY, its Mayor or City Council and members, employees, officers, agents, and representatives from and against any and all claims, demands, lawsuits, losses, damages, injuries, and liabilities, including attorneys’ fees, costs and expenses, incurred by the City in connection with the performance of the contract awarded hereunder, whether or not caused or contributed to, by, or on account of any acts or omissions on the part of the successful CONTRACTOR, or its officers, employees, agents or servants.

INSURANCE

The CONTRACTOR shall purchase and maintain continuously, throughout the term of the contract, insurance coverage meeting all the following requirements.

Worker’s Compensation and Employer’s Liability: Statutory Limits

General Liability: $1,000,000.00 per occurrence Combined Single Limit (Bodily Injury & Property Damage), $2,000,000.00 aggregate, including Contractual Liability specifically referencing this contract.

Automobile Liability: $1,000,000.00 per occurrence Combined Single Limit (Bodily Injury & Property Damage), $2,000,000.00 aggregate, including Hired and Non-Owned Autos Coverage and Medical Payments Coverage of $10,000.00 per person, $50,000.00 per occurrence. The Provider agrees that it will maintain or cause to be maintained, for the duration of the Agreement, such policies of insurance as will protect the Provider, the City, the Department, the Federal Government, and the FTA. The Provider shall be responsible for the payment of any deductibles required by the insurance policies.

Each of the above coverages shall be written by a company with a minimum rating of “A” by the Best’s Insurance Rating Guide. All coverages must be written by companies that are admitted, licensed carriers in the State of Illinois.

The City of DeKalb, the State of Illinois, and the Federal Government shall be named as an Additional Insured on each of the above policies.

A Certificate of Insurance evidencing the required coverages and this Additional Insured Endorsement shall be furnished to the City prior to the first day of service. Such insurance shall be cancelable or modifiable only on written notice by registered mail to
the CITY at least thirty (30) days in advance of any changes. The City reserves the right to require the CONTRACTOR to furnish a copy of its insurance policy for examination prior to the first day of service.

**CONTRACTOR’S AGREEMENT(S)**

Any agreement that the CONTRACTOR shall require the City to sign prior to initiating any contract must be included in the proposal. Said agreement shall be reviewed by the CITY’s legal counsel. If the CONTRACTOR is unwilling to delete or modify any term or condition deemed objectionable by the CITY, the proposal containing the objectionable term or condition shall be deemed a “NO PROPOSAL”. No term or condition shall be incorporated into any contract awarded unless agreed to in writing by the CITY.

**PAYMENT**

Payment shall be made to the CONTRACTOR following the end of each calendar month, upon receipt of an itemized bill, including documented passenger trips provided. Payment shall only be provided upon receipt of DOAP grant fund payments received from the STATE to cover invoice requests. Should STATE funds be depleted, CONTRACTOR shall relay on funds from other sources, including lines-of-credit, and service and staff reductions, until such time additional funds are received from the STATE. Upon receipt of funds, the CITY agrees to pay all remaining invoices, up to the amount received from the STATE, within five (5) business days of receipt of funds. Any reduction in services or other cost cutting measures shall be approved by affected communities and subject to the public involvement procedures for changes in service that satisfy the program-of-project requirements of the Federal Transit Administration (FTA) Section 5307 Program and subject to the DSATS Public Involvement Participation Plan regulations.

The City of DeKalb will reimburse the CONTRACTOR for sixty-five percent (65%) of operating costs incurred, subject to limit set annually. In Fiscal Year 2011, the City was able to dedicate $2,422,400, and anticipates, but does not guarantee, allocating a similar amount in future years. (Refer to GRANTS section of this document for more information.)

**TERMINATION**

The City reserves the right to terminate any contract awarded hereunder for any or no reason upon thirty (30) days prior written notice to the successful CONTRACTOR. Upon termination of the contract in accordance with the previous sentence, the liability of the City shall be limited to payment of the contract price prorated to the effective date of the termination.
MISCELLANEOUS

A. No claim for relief shall be granted due to errors or omissions in the proposal documents.
B. CONTRACTOR shall be held strictly to their proposals as submitted.
C. Proposals shall be available for inspection at the offices of the City after the award of the contract.
D. All correspondence, including proposals, shall be mailed or hand delivered to:

City of DeKalb
Attn: Brian Dickson, AICP
Transportation Planner / MPO Coordinator
223 S. Fourth St., Suite A
DeKalb, IL 60155

COMPLIANCE WITH STATE AND FEDERAL LAWS

Incorporation of FTA terms; The following provisions include, in part, certain Standard Terms and Conditions required by the Illinois Department of Transportation (IDOT), whether or not expressly set forth in the contract provisions found herein. All contractual provisions required by IDOT, as set forth in the FTA Circular C 4220.1F, dated November 1, 2008, (Rev. 3, February 15, 2011), are hereby incorporated by reference. Anything to the contrary 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 City of DeKalb request that would cause the CITY to be in violation of the FTA terms and conditions. The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation to those listed directly or by reference herein, as they may be amended or promulgated from this time during the term of this contract. The CONTRACTOR’s failure to so comply shall constitute a material breach of this contract.

In addition, the CONTRACTOR and any subcontractors shall adopt a drug-free policy as outlined below. The purpose of this policy is to assure worker fitness for duty and to protect our employees, passengers, and the public from the risks posted by the misuse of alcohol and use of prohibited drugs. This policy is also intended to comply with all applicable Federal and STATE regulations governing workplace anti-drug and alcohol programs in the transit industry. The Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 653 and part 654, as amended, that mandate urine drug testing and breath alcohol testing for safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation (DOT) has also published 49 CFR Part 40, as amended that sets standards for the collection and testing of urine and breath
specimens. In addition, the Federal government published 49 CFR Part 29, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA. This policy incorporates those requirements for safety-sensitive employees and other when so noted.

The CONTRACTOR and all subcontractors shall acknowledge and affirm that they will comply with the provision of all applicable state and federal laws, including but not limited to Section 2-105A of the Illinois Human Rights Act.

RENEWAL OPTION

The successful CONTRACTOR shall provide service for the period beginning October 1, 2011 and ending September 30, 2013. The contract may be renewed for additional one (1) year periods up to but not exceeding three additional contract periods, at the sole discretion of the City, contingent on the performance of the CONTRACTOR, continued availability of Federal Section 5307 or STATE Downstate Operating Assistance funds, and service demand.

BID PROPOSAL

CONTRACTOR shall submit an All-Inclusive Proposal.

ALL-INCLUSIVE PROPOSAL

The All-Inclusive Proposal shall be the amount charged per passenger trip, inclusive of all operating costs, to furnish transit service operations in accordance with the specifications. All-Inclusive proposal shall be provided on a per-passenger-trip cost basis. If the CITY accepts an All-Inclusive Proposal, and if the CITY exercises its option to renew the contract for a subsequent year, CONTRACTOR’s charges will be allowed to increase yearly at a rate not to exceed the increase for the previous twelve (12) months, as shown in the Consumer Price Index for the Midwest Region for Urban Wage Earners and Clerical Workers (CPI-W) for the portion of the consumer Price Index for all items, as determined by the U.S. Department of Labor, Bureau of Labor Statistics (http://www.bls.gov/news.release/cpi.t06.htm), provided that the rate of increase per year shall not exceed 7%. As required by state regulation, use of fuel containing ethanol gasoline is required in gasoline-powered vehicles.

TRANSITION PERIOD

If the CONTRACTOR’s bid is accepted, within three (3) business days of the awarding of the contract, the CONTRACTOR shall meet with officials from the CITY, the current service provider, and other officials representing agencies within the DeKalb-Sycamore-Cortland urban region to develop a transition plan that looks to minimize the negative
effects to customers who use the current transit services in the region, should a new transit provider be selected.

**EVALUATION CRITERIA**

The following criteria will be used to evaluate proposals.

1. Financial considerations *(25 Points)*
2. Firm Qualifications *(15 Points)*
3. Organization and Staffing Plan *(25 Points)*
4. Operating Methodology *(30 Points)*
5. FTA/Illinois Operational Experience *(25 Points)*
6. References *(10 Points)*
7. Proposed Costs *(35 Points)*

Each of these criteria is further described in the following section.

**PROPOSAL FORMAT AND SUBMISSION**

The format for proposals should be organized around the evaluation criteria. Each proposal will be prepared simply and economically, avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete, accurate and reliable presentation. The response to this RFP must be made in accordance with the format set forth in this Section. **The proposal shall be in an envelope marked “Technical Proposal – DeKalb Transit Services.”** Failure to adhere to the following format may be cause for rejection of the proposal as non-responsive.

**A. Cover Letter**

The proposal should contain a letter and introduction (limit to one (1) page) and include the company name and address, and the names, telephone numbers, fax numbers, and e-mail addresses of the persons who will be authorized to represent the CONTRACTOR regarding all matters related to the proposal and any contract subsequently awarded to said CONTRACTOR. This letter shall be signed by a person authorized to bind the company to all commitments made in the proposal. All signatures above must be original and in ink on at least one copy of the proposal submitted to the City.

**B. Technical Proposal**

The technical portion of the proposal is the CONTRACTOR's proposed Scope of Work with explanation of technical approaches and a detailed outline of the proposed program for executing the requirements of the technical scope and achieving objectives of the project. Each CONTRACTOR shall carefully examine the documents and take such reasonable steps as needed to ascertain the nature of the work, the conditions that affect the work and the cost thereof. Failure to do so will not relieve CONTRACTOR
from responsibility for estimating the cost of successfully performing the work according to the City standards.

At its sole discretion, the City may also elect to conduct preliminary reference and other background checks to supplement the information submitted in response to this RFP. Any such checks will seek to determine the following:

◆ Whether the CONTRACTOR has a satisfactory performance record.
◆ Whether the CONTRACTOR has a satisfactory record of integrity and business ethics.
◆ Whether the CONTRACTOR is in compliance with applicable licensing and tax laws and regulations.

1. Financial Considerations (25 Points) This section of the proposal will be independently reviewed by appropriate City staff participating in the evaluation assisted by outside experts as the City sees fit. This section will be scored to determine the financial responsiveness and responsibility of the CONTRACTOR.

   a) Indicate if any participants in the proposal have been involved in bankruptcy proceedings as a debtor. If yes, state date, court of jurisdiction, amount of liabilities and amount of assets.

   b) Provide detailed information regarding past and pending litigation, liens or claims arising from litigation in excess of $100,000 in which any participant in the proposal is directly or indirectly involved.

   c) Provide audited financial statements for the past three (3) years. If a partnership, submit financial statements for each partner. If audited statements are not available, CONTRACTOR may be required to submit additional financial information to establish financial responsibility.

   d) Provide evidence of ability to obtain specified amounts of insurance from a qualified insurance company authorized to do business in Illinois. Proof shall take the form of a letter from CONTRACTOR’s insurance agent stating that they are eligible to obtain insurance to the prescribed limits should a contractual offer be extended. Disclose intended deductible levels, if any. Disclose the total number and amount of claims paid by the CONTRACTOR in the last three (3) years. Demonstrate financial capability commensurate with the required insurance limits and your proposed deductible levels.

   e) Provide evidence of familiarity with the FTA Uniform System of Accounts and with National Transit Database reporting.
f) Provide financial credit references. A minimum of two (2) is required including the primary financial institution of the CONTRACTOR. Include name, title, and current telephone number of a contact person and the address of the financial institution.

g) Provide proof that CONTRACTOR has the resources to obtain the 35% local match to the STATE DOAP contract required local match. This has been a standard provision of the contract with the current service provider and shall continue as part of the new contract.

h) Provide signed certification (see Addendum A) that CONTRACTOR shall comply with all LOBBYING regulations, as required by the FTA.

i) Provide signed certification (see Addendum A) that CONTRACTOR shall comply with all GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) regulations, as required by the FTA.

j) Provide signed certification (see Addendum A) that CONTRACTOR shall comply with all CIVIL RIGHTS REQUIREMENTS regulations, as required by the FTA.

k) Provide signed certification (see Addendum A) that CONTRACTOR shall comply with all DRUG FREE WORKPLACE regulations, as required by the FTA.

l) The Appendix also includes the major regulations and clauses that will be required within any contract signed between the CONTRACTOR and the CITY. By submitting a proposal, the CONTRACTOR agrees to comply with all clauses identified herein, where applicable, as well as any other FTA and IDOT requirements pertaining to the use of FTA 5307 and DOAP grant funds not specifically mentioned herein.

m) Provide list of additional local match funding sources, which CONTRACTOR could provide to supplement the local match funds, along with anticipated amount of fund each source may provide.

2. **Firm Qualifications (15 Points)**
   a) Explain the general character of work performed by your firm.

   b) Describe your firm's qualifications and experience to perform the work described in this RFP. Information about experience should include direct experience with the specific subject-matter area.

   c) The CONTRACTOR must have an Equal Employment Opportunity and Affirmative Action Programs. Provide a copy of these plans and identify in detail, accomplishments in these programs.

   d) List all transit service contracts entered into in the last five years, providing:
• Name and address of client

• A brief description of the work performed (scope of service, number and type of vehicles, number of Contractors employed/managed by the CONTRACTOR, asset ownership, maintenance responsibility, etc)

• Dates of performance (noting whether these beginning and ending dates coincided with the original Contract term and if not why not)

• Annual dollar value of contract

• Major accomplishments and challenges

e) Has your firm ever requested an increase or adjustment in your contract rate? If so, at which properties were these requests made, what were the circumstances, and what were the outcomes of your requests?

3. Organization and Staffing Plan (25 Points)

a) Provide an organizational chart and staffing plan that describes the proposed on-site staff distribution to accomplish this work. The staffing plan should include a chart that partitions the time commitment of each professional staff member across the proposed tasks. This section should also quantify a listing of the number of full-time equivalent (FTE) personnel by title proposed for the on-going management and operation of the system.

b) Resumes for resident manager and assistant managers and for the maintenance manager shall demonstrate directly relevant background and experience with the types of services and equipment the City operates, respectively.

c) Provide a description of CONTRACTOR hiring, training, and retraining programs and certification processes including minimum hiring qualifications. Include a new-hire training program syllabus including time periods for each training element, specifically detailed to the City.

d) Provide an organizational chart for your firm and the corporate division that will be in charge of this project. Explain the nature of the resident manager’s relationship with corporate management and how and with whom will the City interact with regarding corporate support.

e) Identify any subcontractor, consultant, or corporate staff personnel, if any, who will be helping to fulfill Contract obligations and the services they will be providing. The proposal shall certify that all subcontracted firms shall agree to comply with all FTA
and State of Illinois rules and regulations that apply to provide the services applicable to this contract.

f) Provide evidence that the required service start schedule can surely be met, taking into consideration all existing and prospective commercial and government business commitments.

g) Provide a description of the Safety and Security training that all safety-related employees receive; including name of firm providing this training and any awards or recognitions that firm may have received.

h) Provide a description of any policies and/or training, which employees have received to assist them in dealing with persons with Limited English Proficiency and other Title VI issues.

i) Provide an overview of the firm, which the CONTRACTOR intends to use to perform the drug testing required of all safety sensitive employees. This should include a profile of the firm, the services they intend to provide, and references for the work they provide. As a subcontractor to the CONTRACTOR, they must also conform to all FTA rules and regulations.

4. **Operating Methodology (30 Points)**
   a) Describe your understanding of the challenges associated with operating the subject transit services.

b) Describe the distinctive attributes of your proposal that will set your firm apart from your competition.

c) Describe the service performance standards you have established for this contract and what internal (on-site) and corporate quality control programs will be used to ensure that service performance standards are met.

d) Supply the CITY with a detailed transition plan designed to minimize the incidence of problems in the course of assuming the responsibilities of the existing CONTRACTOR. This is a critical element of the submittal as it sets the stage for how smoothly the actual transition of responsibilities from existing to new CONTRACTOR will take place. The CITY’s aim is to have this transition occur seamlessly or, better, with a perceptible increase in service quality. The new contract shall begin on October 1, 2011, but the transition period may extend beyond this period with agreement negotiated between the CONTRACTOR, the CITY, and current service provider, but the selected CONTRACTOR must provide assurances that all existing services will be provided as of the first day they contract starts.
e) Include a detailed description of how you will thoroughly indoctrinate on-site management hired for this project into the CITY operation. It is critical that management be thoroughly familiar with services, programs, policies, and procedures in order to consistently train and manage others. Also, describe how on-site management not currently employed by you will be indoctrinated into your organization.

f) Describe your firm’s ongoing safety program for this project, including a description of the safety committee.

g) Provide the written security procedures and fare collection/monitoring program you will use for this contract.

h) Provide a description of your firm’s drug and alcohol testing program for this contract.

i) Describe any measures you propose to respond to vehicle breakdowns, accidents, and other service disruptions, including your plan for on-street supervision and staging of relief vehicles and Contractors.

j) Describe the fleet-specific maintenance plan you will use for this contract.

k) What bus and equipment maintenance program and the maintenance record-keeping system will you use for this contract?

l) What type of trip scheduling system will be used to schedule all origin to destination trips on the DeKalb-Sycamore urban region? If a computerized system is in place, please identify the type of software being used and if the transit fleet to be used will have GPS and mobile data computer equipment installed. If a computerized scheduling and location system has not yet been implemented, provide a timeline on and plan on how quickly such a system will be implemented.

m) Provide timeline and description on how you plan to adopt all the various plans identified in PROPOSAL SPECIFICATIONS section 16.

5. FTA Operational Experience (25 Points)

As public transit funding for the DeKalb-Sycamore region relies heavily on grant funds received from the Federal Transit Agency and the State of Illinois, it is vital that the CONTRACTOR have a good working knowledge of all FTA and State of Illinois regulations for providing public transit. Please provide proof of your familiarity with these programs.
a) What is your firm’s experience in dealing with the FTA and their rules and regulations in providing public transit? Please provide the names and titles of specific persons with working knowledge of FTA regulations and their experience in this area.

b) What is your firm’s experience in dealing with the State of Illinois Downstate Operating Assistance Program, and its rules and regulations? Please provide the names and titles of specific persons with working knowledge of DOAP regulations and their experience in this area.

c) What is your firm’s experience in participating in FTA Triennial Reviews? Please provide the names and titles of specific persons in your firm who have dealt with Triennial Reviews. Also, submit the FTA findings on all reviews performed in which the firm was involved.

6. Professional References (10 Points)

The City intends to contact some or all of the prior clients to seek information about performance and client satisfaction, including evaluations, if any.

a) Firm References

Provide references for current transit service contracts. For each contract, include a name, telephone number, and e-mail address of a person able to attest to the work performed.

b) Key Personnel References

Submit reference information for all key personnel proposed for this project. For each contact, include a name, telephone number, and e-mail address of a person able to attest to the work performed.

6. Proposed Costs (35 Points)

Cost should be provided on a total operating cost per-passenger-trip and per-operating-hour of service. Additional supporting documentation may be provided at the discretion of the CONTRACTOR.

CITY OF DEKALB IS AN EQUAL OPPORTUNITY EMPLOYER.
RFP ADDENDUMS AND EXHIBITS:

Addendum A.  FTA Required Contractual Clauses (must sign)

Exhibit A: VAC Green Line
Exhibit B: VAC Blue Line
Exhibit C: VAC Kishwaukee Line
Exhibit D: 2010 DSATS Transit Development Plan Update
Exhibit E: 2010 Facility Needs Study
Exhibit F: DSATS / VAC Public Transit Overview, Contracts, and Policies
DSATS Required Clauses and Regulations for all FTA Applicable Contracts

A.1 - Federally Required and Other Model Contract Clauses

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FTA Required Regulations on DSATS/City of DeKalb Contracts

As DSATS and the City of DeKalb FTA 5307 grant projects are funded with Federal Transit Administration (FTA) grant funds, all contracts with DSATS / City of DeKalb must adhere to FTA federal regulations. As the Federal Highway Administration (FHWA) has similar regulations, DSATS includes these requirements in FHWA funded grants also. For Federal Transit Administration Agreements authorized by 49 U.S.C. chapter 53, Title 23, United States Code (Highways), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended by the SAFETEA-LU Technical Corrections Act, 2008, the Transportation Equity Act for the 21st Century, as amended, the National Capital Transportation Act of 1969, as amended, the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009, or other Federal laws that FTA administers, DSATS member organizations, the City of DeKalb, all [CONTRACTORS / BIDDERS] which [DSATS / City of DeKalb] contracts with, and all subcontractors hired by any [CONTRACTORS / BIDDERS] agree to conform all regulations stated or inferred within the FTA Master Agreement “FTA MA(17)” (http://www.fta.dot.gov/documents/17-Master.pdf). Below are all clauses, which must be included in all contracts signed between the City of the DeKalb and the contractor on projects funded with FTA grant funds. Please note that by submitting a proposal to any Invitation for Bids (IFB) or Request for Proposal (RFP) issued by DSATS or the City of DeKalb using 5307 grant funds, the BIDDER / CONTRACTOR agrees they shall be able to conform to all regulations stated below. DSATS requests a staff person at the bidding organization who is authorized to sign contractual agreements, sign, and date each section that is applicable to the project they are bidding upon.

All Contracts:

- **§ 2.f: No Federal Government Obligations to Third Parties** [see 18 - NO GOVERNMENT OBLIGATION TO THIRD PARTIES, Page 43]: In connection with the Project, the Recipient agrees that, absent the Federal Government’s express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that, the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any subrecipient, lessee, third party contractor, or other participant at any tier of the Project.

- **§ 3.f: False or Fraudulent Statements or Claims** [see 19 - PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS, Page 44]: The Recipient acknowledges and agrees that:
  1. **Civil Fraud**: 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 the Recipient’s activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.
(2) **Criminal Fraud:** If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

- **§ 15.1: Access to Third Party Contract Records** [see 10 - ACCESS TO RECORDS AND REPORTS, Page 26 & 22 - PRIVACY ACT, Page 50]: The Recipient agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

- **§ 21.c: Application of Federal, State, and Local Laws, Regulations, and Directives** [see 29 - INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS, Page 62]:

  (1) **Federal Laws, Regulations, and Directives:** The Recipient agrees that Federal laws and regulations control Project award and implementation. The Recipient also agrees that Federal directives, as defined in this Master Agreement, provide Federal guidance applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Recipient understands and agrees that unless the recipient requests FTA approval in writing, the Recipient may incur a violation of Federal laws or regulations, its Grant Agreement or Cooperative Agreement, or this Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

  (2) The Recipient understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Recipient on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new laws, regulations, and directives may become effective after the date on which the Recipient executes the Grant Agreement or Cooperative Agreement for the Project, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal laws, regulations, and directives will apply to the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

  (3) FTA’s written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Recipient signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. To accommodate changing Federal requirements, the Recipient agrees to include in each agreement with each subrecipient, each lease, each third party
contract, and other similar documents implementing the Project notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in this Master Agreement are minimum requirements, unless modified by FTA.

- **§ 12 Civil Rights** [see 23 - CIVIL RIGHTS REQUIREMENTS, page 51]: The Recipient agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:
  - **§ 12.a: Nondiscrimination in Federal Public Transportation Programs**: The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
  - **§ 12.b: Nondiscrimination – Title VI of the Civil Rights Act**: The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients”, and any other applicable Federal directives that may be issued.
  - **§ 12.c: Equal Employment Opportunity**: The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and implementing Federal regulations and any later amendments thereto. Except to the extent determines otherwise in writing, the Recipient also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:
    1. **General**: The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
    2. **Equal Employment Opportunity Requirements for Construction Activities**: For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as “construction,” the

- **§ 12.d: Disadvantaged Business Enterprise** [see 27 - DISADVANTAGED BUSINESS ENTERPRISE (DBE), Page 59]: To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subrecipient, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:
  
  
  2. The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Recipient's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. Upon notification by U.S. DOT to the Recipient of the Recipient's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 et seq., or both.

§ 12.f: Nondiscrimination on the Basis of Age: The Recipient agrees to comply with all applicable requirements of:


§ 12.g: Access for Individuals with Disabilities: The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37;

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


(9) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194;
(10) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and
(11) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

- **§ 12.h: Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections**: To the extent applicable, the Recipient agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.


- **§ 12.k: Other Nondiscrimination Laws**: The Recipient agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

- **§ 15: Procurement**: To the extent applicable, the Recipient agrees to comply with the following third party procurement provisions:

- **§ 15.a: Federal Standards**: The Recipient agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Recipient also
agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, “Third Party Contracting Guidance,” except to the extent FTA determines otherwise in writing. The Recipient agrees that it may not use FTA assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA “Best Practices Procurement Manual” provides additional third party contracting information, the Recipient understands and agrees that the FTA “Best Practices Procurement Manual” may omit certain Federal requirements applicable to specific third party contracts.

Voluntary Action Center 8/29/11

Company Name Date

Signature Title

Executive Director
Contracts Exceeding $10,000

- § 11: Right of the Federal Government to Terminate [see 21 - TERMINATION, Page 45]: Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Recipient understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Recipient before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

Voluntary Action Center 8/29/11

Company Name

Date

Tom Zuckey Executive Director

Signature Title
Contracts Exceeding $25,000

- **§ 3.b: Debarment and Suspension** [see 22 - GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT), Page 49]: The Recipient agrees to comply with applicable provisions of Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note, and U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget FTA Master Agreement MA(17), 10-1-2010 18 and to include a similar term or condition in each lower tier covered transaction, assuring that, to the extent required by the U.S. DOT regulations and U.S. OMB guidance, each subrecipient, lessee, third party contractor, and other participant at a lower tier of the Project, will review the “Excluded Parties Listing System” at , and will include a similar term or condition in each of its lower tier covered transactions.

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Signature | Title
---|---
Tom Zucker | Executive Director
Contracts Exceeding $100,000

- **Certificate of LOBBYING Compliance** [see 10 - LOBBYING, Page 24]: 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. 3801, et seq., apply to this certification and disclosure, if any.

- **Buy America** [see 2 - BUY AMERICA REQUIREMENTS, Page 16]: 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; subcontractors under that amount are subject to Buy America.
  - Certification requirement for procurement of steel, iron, or manufactured products

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

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**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.

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- 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.

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

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

Voluntary Action Center 8/29/11

Company Name Date

Signature Title

Contracts for Specific Projects:

- CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS (see 8 - BUS TESTING, Page 22)

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

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

Voluntary Action Center 8/29/11

Company Name Date

Signature Title
BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT (see 9 - PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS, Page 23)

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at $100,000.)

Certificate of Compliance

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

Company Name  
Voluntary Action Center

Date  
8/29/11

Signature  
Tom Zaske

Title  
Executive Director

Certificate of Non-Compliance

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

Company Name  
Voluntary Action Center

Date  
8/29/11

Signature  
Tom Zaske

Title  
Executive Director
FTA SUGGESTED CONTRACT CLAUSES
The FTA has developed the following suggested contract clauses they advise be put into all contracts that 5307 grantees enter into with Third Party Contractors. In order to ensure compliance with all federal regulations, any firm submitting a proposal for any DSATS / City of DeKalb project, which uses Federal Transit Administration Funds, agrees to:

- Submit with their Request For Proposal (RFP) or Invitation For Bid (IFB) the clauses identified above, with all clauses that are applicable to the proposal signed and dated and submitted with the RFP/IFB.
- Should a firm be selected, they shall include the clauses identified above directly into the contract, and the suggested contract clauses identified below shall be included as an addendum to the contract.
- All language struck-out shall be considered not applicable to the contract to be signed and shall be removed from the final contract. If the respondent feels there are any other clauses that are not applicable to the contract to be signed, or the city identifies any additional clauses to be removed, they must be identified and agreed upon before signing of contract.
1. **FLY AMERICA REQUIREMENTS**

**Applicable Federal Regulations:** 49 U.S.C. § 40118, 41 CFR Part 301-10

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

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

**Model Clause/Language**
The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

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

**Applicable Federal Regulations:** 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. FTA has developed the following language.

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

**Applicable Federal Regulations:** 49 U.S.C. 5323(d), 49 CFR Part 604

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

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

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

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

3. **SCHOOL BUS REQUIREMENTS**

**Applicable Federal Regulations:** 49 U.S.C. 5323(F), 49 CFR Part 605

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

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

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

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

**Applicable Federal Regulations:** 46 U.S.C. 1241, 46 CFR Part 381

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

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

**Model Clause/Language**
The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

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

**Applicable Federal Regulations:** 42 U.S.C. 7701 et seq. 49, CFR Part 41

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

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

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

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


Applicability to Contracts
The Energy Conservation requirements are applicable to all contracts.

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

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

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

Applicable Federal Regulations: 33 U.S.C. 1251

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

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

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

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

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

**Applicable Federal Regulations:** 49 U.S.C. 5323(c), 49 CFR Part 665

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

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

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

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

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

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


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

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

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

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

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

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

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

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

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

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

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


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

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

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

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


- 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.


**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.]
11. ACCESS TO RECORDS AND REPORTS


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

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

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

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

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

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

Sources of Authority:

1. 49 USC 5325 (a)
2. 49 CFR 633.17
3. 18 CFR 18.36 (i)
12. FEDERAL CHANGES

Applicable Federal Regulations: 49 CFR Part 18

Applicability to Contracts
The Federal Changes requirement applies to all contracts.

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

Model Clause/Language
No specific language is mandated. The following language has been developed by FTA.

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

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

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall
consist of a firm commitment such as a bid bond, certifies check, or other negotiable instrument accompanying a
bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be
required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance
bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under
such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one
executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and
material in the execution of the work provided for in the contract. Payment bond amounts required from
Contractors are as follows:

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

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

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

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

Flow Down
Bonding requirements flow down to the first tier contractors.

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

Bid Bond Requirements (Construction)

(a) Bid Security

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

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

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

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

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

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

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

(a) Performance bonds

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

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

(b) Payment bonds

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

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

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

   (iii) Two and one half million if the contract price is more than $5 million.
2. If the original contract price is $5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

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

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

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

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

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

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

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

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

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

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

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

1. The penal amount of payment bonds shall equal:

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

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

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

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

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

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

**Warranty of the Work and Maintenance Bonds**

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

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

Applicable Federal Regulations: 42 U.S.C. 7401 et seq, 40 CFR 15.61, 49 CFR Part 18

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

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

Model Clauses/Language
No specific language is required. FTA has proposed the following language.

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

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


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

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

Model Clause/Language
No specific clause is mandated, but FTA has developed the following language.

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

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

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

Clause Language
Davis-Bacon and Copeland Anti-Kickback Acts

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

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

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

Clause Language
Contract Work Hours and Safety Standards

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

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

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

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
18. [RESERVED]
19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts
Applicable to all contracts.

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

Model Clause/Language
While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

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

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

**AND RELATED ACTS**


**Applicability to Contracts**
These requirements are applicable to all contracts.

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

**Model Clause/Language**
These requirements have no specified language, so FTA proffers the following language.

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

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

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

Applicable Federal Regulations: 49 U.S.C. Part 18, FTA Circular 4220.1F

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

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

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

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

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

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

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

Background and Applicability

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

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

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

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

Suspension and Debarment

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

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

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

**Applicable Federal Regulations**: 5 U.S.C. 552

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

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

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

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

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

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

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


Applicability to Contracts
The Civil Rights Requirements apply to all contracts.

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

Model Clause/Language
The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

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

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

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

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

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

Applicable Federal Regulations: 49 CFR Part 18, FTA Circular 4220.1F

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

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

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

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

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

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

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

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

**Applicable Federal Regulations:** 37 CFR Part 401, 49 CFR Parts 18 and 19

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

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

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

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

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


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

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

Model Clause/Language
Since no mandatory language is specified, FTA had developed the following language:

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

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

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

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

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

**Applicable Federal Regulations:** 49 CFR Part 26

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

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts. A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

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

**Disadvantaged Business Enterprises**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency’s overall goal for DBE participation is 1%. A separate contract goal [has not] been established for this procurement.

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

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

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;

4. Written documentation of the bidder / offerors commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

6. If the contract goal is not met, evidence of good faith efforts to do so.

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

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

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

e. The contractor must promptly notify {insert agency name}, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of {insert agency name}. 
29. [RESERVED]
30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

Applicable Federal Regulations: FTA Circular 4220.1F

Applicability to Contracts
The incorporation of FTA terms applies to all contracts.

Flow Down
The incorporation of FTA terms has unlimited flow down.

Model Clause/Language
FTA has developed the following incorporation of terms language:

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


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

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

Model Clause/Language

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

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

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

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

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

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

**Drug and Alcohol Testing**

**Option 1**

The contractor agrees to:

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

**Drug and Alcohol Testing**

**Option 2**

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

**Drug and Alcohol Testing**

**Option 3**

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

**PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER – MATRICES**

### A. THIRD PARTY CONTRACT PROVISIONS
(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding $2,000)

<table>
<thead>
<tr>
<th>PROVISION</th>
<th>COMMENTS</th>
<th>MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)</th>
</tr>
</thead>
<tbody>
<tr>
<td>All FTA Assisted Third Party Contracts and Subcontracts</td>
<td></td>
<td>§ 2.f</td>
</tr>
<tr>
<td>No Federal Government Obligations to Third Parties (Use of Disclaimer)</td>
<td></td>
<td>§ 3.f</td>
</tr>
<tr>
<td>False or Fraudulent Statements or Claims – Civil and Criminal Fraud</td>
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<td>§ 15.t</td>
</tr>
<tr>
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<tr>
<td>Changes to Federal Requirements</td>
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<td>§ 12</td>
</tr>
<tr>
<td>Civil Rights (Title VI, ADA, EEO (except special DOL construction clause))</td>
<td>Contract awarded on the basis of a bid/proposal offering to use DBEs.</td>
<td>§ 12.d</td>
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<td>Disadvantaged Business Enterprises (DBEs)</td>
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<td>§ 15.a</td>
</tr>
<tr>
<td>Incorporation of FTA Terms</td>
<td>Per FTA C 4220.1F.</td>
<td>§ 15.a</td>
</tr>
</tbody>
</table>

### Awards Exceeding $10,000

| Terminiations                                                             | If 49 CFR Part 18 applies.                                                | § 11 and § 15.a, which incorporate 49 CFR Part 18 |
| Future EEO provision for construction contracts                           | If 49 CFR Part 18 or Part 19 indicate that the DOL EEOC regulations at 41 C.F.R. Chapter 60 apply. | § 15.a, which incorporates 49 CFR Part 18 and Part 19 |

### Awards Exceeding $25,000

| Debarment and Suspension                                                 | § 3.b                                                                    |

### Awards Exceeding the Simplified Acquisition Threshold ($100,000)
(As of February 2011, OMB has not to date adopted the FAR clause 2.101 $150,000 standard for grants.)

| Buy America                                                               | When tangible property or construction will be acquired.                  | § 14.a                                                      |
| Resolution of Disputes, Breaches, or Other Litigation                   |                                                                          | § 56                                                       |

### Awards Exceeding $100,000 by Statute

| Lobbying                                                                 | As of February 2011, the OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 $150,000 simplified acquisition threshold standard. | § 3.d                                                       |
| Clean Air                                                                 |                                                                          | § 25.b                                                     |
| Clean Water                                                               |                                                                          | § 25.c                                                      |
# PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER — MATRICES

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding $2,000)

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</thead>
<tbody>
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<td><strong>Transport of Property or Persons</strong></td>
<td></td>
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<tr>
<td>Cargo Preference</td>
<td>When acquiring property suitable for shipment by ocean vessel</td>
<td>§ 14.b</td>
</tr>
<tr>
<td>Fly America</td>
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<td>§ 14.c</td>
</tr>
<tr>
<td><strong>Construction Activities</strong></td>
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<tr>
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<td></td>
<td></td>
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<tr>
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<td>For contracts exceeding $2,000.</td>
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</tr>
<tr>
<td>Construction Employee Protections</td>
<td></td>
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<tr>
<td>– Contract Work Hours &amp; Safety Standards Act</td>
<td>For contracts exceeding $100,000. As of February 2011, the OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 $150,000 simplified acquisition threshold standard.</td>
<td>§ 24.a(2)</td>
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<td>Construction Employee Protections</td>
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<td>– Sec. 1 Copeland Anti-Kickback Act</td>
<td>All contracts</td>
<td>§ 24.a(3)</td>
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<tr>
<td>– Sec. 2 Copeland Anti-Kickback Act</td>
<td>All construction contracts exceeding $2,000.</td>
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<td>Bonding for Construction Activities</td>
<td></td>
<td></td>
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<tr>
<td>Exceeding $100,000</td>
<td>5% bid guarantee bond. 100% performance bond. Payment bond equal to:</td>
<td>§ 15.o(1)</td>
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<td></td>
<td>– 50% for contracts &lt;$1M.</td>
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<td>– 40% for contracts &gt;$1M – &lt;$5M.</td>
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<td></td>
<td>– $2.5M for contracts &gt; $5M.</td>
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<tr>
<td>Seismic Safety</td>
<td>Construction contracts for new buildings or for existing buildings.</td>
<td>§ 23.e</td>
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<td><strong>Nonconstruction Activities</strong></td>
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<tr>
<td>Nonconstruction Employee Protection</td>
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<tr>
<td>– Contract Work Hours &amp; Safety Standards Act</td>
<td>For all turnkey, rolling stock, and operational contracts (except transportation services contracts and open market contracts) exceeding $100,000. As of February 2011, the OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 $150,000 simplified acquisition threshold standard.</td>
<td>§ 24.b</td>
</tr>
<tr>
<td><strong>Transit Operations</strong></td>
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<tr>
<td>Transit Employee Protective Arrangements</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Drug Use and Testing</td>
<td>Safety sensitive functions.</td>
<td>§ 32.b</td>
</tr>
<tr>
<td>Alcohol Misuse and Testing</td>
<td>Safety sensitive functions.</td>
<td>§ 32.b</td>
</tr>
</tbody>
</table>
### PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding $2,000)

<table>
<thead>
<tr>
<th>PROVISION</th>
<th>COMMENTS</th>
<th>MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning, Research, Development, and Demonstration Projects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Patent Rights</td>
<td></td>
<td>§ 17</td>
</tr>
<tr>
<td>Rights in Data and Copyrights</td>
<td></td>
<td>§ 18</td>
</tr>
<tr>
<td>Special Notification Requirements for States</td>
<td></td>
<td>§ 38</td>
</tr>
<tr>
<td>Special Notification Requirement for States</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous Special Requirements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy Conservation</td>
<td></td>
<td>§ 26</td>
</tr>
<tr>
<td>Recycled Products</td>
<td>Contracts when procuring $10,000 or more per year of items designated by EPA.</td>
<td>§ 15.k</td>
</tr>
<tr>
<td>Conformance with National ITS Architecture</td>
<td>Contracts and solicitations for ITS projects.</td>
<td>§ 15.m</td>
</tr>
<tr>
<td>ADA Access</td>
<td>Contracts for rolling stock or facilities construction/renovation.</td>
<td>§ 12.g</td>
</tr>
<tr>
<td>Assignability Clause</td>
<td>Procurements through assignments.</td>
<td>§ 15.a, which incorporates 49 CFR Part 18 and 49 CFR Part 19</td>
</tr>
</tbody>
</table>
### PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

#### B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding $2,000)

<table>
<thead>
<tr>
<th>TYPE OF PROCUREMENT</th>
<th>PROVISION</th>
<th>Professional Services/A&amp;E</th>
<th>Operations/Management</th>
<th>Rolling Stock Purchase</th>
<th>Construction</th>
<th>Materials &amp; Supplies</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Federal Government Obligations to Third Parties (by Use of a Disclaimer)</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
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<tr>
<td>False Statements or Claims and Criminal Fraud</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td></td>
</tr>
<tr>
<td>Access to Third Party Contract Records</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td></td>
</tr>
<tr>
<td>Changes to Federal Requirements</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td></td>
</tr>
<tr>
<td>Termination</td>
<td>$10,000 if 49 CFR Part 18 applies.</td>
<td>$10,000 if 49 CFR Part 18 applies.</td>
<td>$10,000 if 49 CFR Part 18 applies.</td>
<td>$10,000 if 49 CFR Part 18 applies.</td>
<td>$10,000 if 49 CFR Part 18 applies.</td>
<td></td>
</tr>
<tr>
<td>Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)</td>
<td>All</td>
<td>All</td>
<td>All&gt; $10,000</td>
<td>All</td>
<td>All</td>
<td></td>
</tr>
<tr>
<td>Special DOL EEO clause for construction projects</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td></td>
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<tr>
<td>Disadvantaged Business Enterprises (DBEs)</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td></td>
</tr>
<tr>
<td>Incorporation of FTA Terms</td>
<td>All</td>
<td>All</td>
<td>All</td>
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<td>All</td>
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<tr>
<td>Debarment and Suspension</td>
<td>$25,000</td>
<td>$25,000</td>
<td>$25,000</td>
<td>$25,000</td>
<td>$25,000</td>
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<tr>
<td>Buy America</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
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</tr>
<tr>
<td>Resolution of Disputes, Breaches, or Other Litigation</td>
<td>$100,000</td>
<td>$100,000</td>
<td>$100,000</td>
<td>$100,000</td>
<td>$100,000</td>
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<tr>
<td>Lobbying</td>
<td>$100,000</td>
<td>$100,000</td>
<td>$100,000</td>
<td>$100,000</td>
<td>$100,000</td>
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<tr>
<td>Clean Air</td>
<td>$100,000</td>
<td>$100,000</td>
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<tr>
<td>Clean Water</td>
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<tr>
<td>Cargo Preference</td>
<td>Transport by ocean vessel.</td>
<td>Transport by ocean vessel.</td>
<td>Transport by ocean vessel.</td>
<td>Transport by ocean vessel.</td>
<td>Transport by ocean vessel.</td>
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<tr>
<td>Fly America</td>
<td>Foreign air transp./travel.</td>
<td>Foreign air transp./travel.</td>
<td>Foreign air transp./travel.</td>
<td>Foreign air transp./travel.</td>
<td>Foreign air transp./travel.</td>
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<tr>
<td>PROVISION</td>
<td>TYPE OF PROCUREMENT</td>
<td>Professional Services/A&amp;E</td>
<td>Operations/Management</td>
<td>Rolling Stock Purchase</td>
<td>Construction</td>
<td>Materials &amp; Supplies</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>---------------------</td>
<td>---------------------------</td>
<td>-----------------------</td>
<td>------------------------</td>
<td>--------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>Davis-Bacon Act</td>
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<td>&gt;$2,000 (also ferries).</td>
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<tr>
<td>Contract Work Hours and Safety Standards Act</td>
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<td>&gt;$100,000 (transportation services excepted).</td>
<td>&gt;$100,000 (also ferries).</td>
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<tr>
<td>Copeland Anti-Kickback Act</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>All</td>
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<tr>
<td>Section 1</td>
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<td></td>
<td></td>
<td></td>
<td>&gt; $2,000 (also ferries).</td>
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<tr>
<td>Section 2</td>
<td></td>
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<tr>
<td>Bonding</td>
<td></td>
<td></td>
<td></td>
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<td>$100,000</td>
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<tr>
<td>Transit Employee Protective Arrangements</td>
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<td>Transit operations.</td>
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<tr>
<td>Charter Service Operations</td>
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<td></td>
<td>All</td>
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<tr>
<td>School Bus Operations</td>
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<td></td>
<td>All</td>
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<tr>
<td>Drug Use and Testing</td>
<td></td>
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<td></td>
<td></td>
<td>Transit operations.</td>
<td></td>
</tr>
<tr>
<td>Alcohol Misuse and Testing</td>
<td></td>
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<td></td>
<td></td>
<td>Transit operations.</td>
<td></td>
</tr>
<tr>
<td>Patent Rights</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>R &amp; D</td>
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</tr>
<tr>
<td>Rights in Data and Copyrights</td>
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<td></td>
<td></td>
<td></td>
<td>R &amp; D</td>
<td></td>
</tr>
<tr>
<td>Energy Conservation</td>
<td></td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
</tr>
<tr>
<td>Recycled Products</td>
<td></td>
<td>EPA-selected items $10,000 or more annually.</td>
<td>EPA-selected items $10,000 or more annually.</td>
<td>EPA-selected items $10,000 or more annually.</td>
<td>All</td>
<td>All</td>
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<tr>
<td>Conformance with ITS National Architecture</td>
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<td>ITS projects.</td>
<td>ITS projects.</td>
<td>ITS projects.</td>
<td>ITS projects.</td>
<td>ITS projects.</td>
</tr>
<tr>
<td>ADA Access</td>
<td></td>
<td>A&amp;E</td>
<td>All</td>
<td>All</td>
<td>All</td>
<td>All</td>
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## PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICIES

### C. CERTIFICATIONS, REPORTS, AND FORMS

<table>
<thead>
<tr>
<th>CERTIFICATIONS, REPORTS, AND FORMS</th>
<th>COMMENTS</th>
<th>REGULATORY REFERENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bus Testing Certification</td>
<td>All procurements of new model transit buses and vans and existing models being modified with a major change for changes.</td>
<td>49 CFR Part 665</td>
</tr>
<tr>
<td>TVM Certifications</td>
<td>All rolling stock procurements.</td>
<td>49 CFR Part 26</td>
</tr>
<tr>
<td>Buy America Certification</td>
<td>Procurements of steel, iron or manufactured products exceeding $100,000.</td>
<td>49 CFR Part 661</td>
</tr>
<tr>
<td>Preaward Review</td>
<td>FTA Annual Certification for any rolling stock procurement.</td>
<td>49 CFR Part 663</td>
</tr>
<tr>
<td>Preaward Buy America Certification</td>
<td>Rolling stock procurements exceeding procurements exceeding $100,000.</td>
<td>49 CFR Part 663</td>
</tr>
<tr>
<td>Preaward Purchaser’s Requirement</td>
<td>All rolling stock procurements.</td>
<td>49 CFR Part 663</td>
</tr>
<tr>
<td>Post Delivery Review</td>
<td>FTA Annual Certification for any rolling stock procurement.</td>
<td>49 CFR Part 663</td>
</tr>
<tr>
<td>Post Delivery Buy America Certification</td>
<td>Rolling stock procurements exceeding procurements exceeding $100,000.</td>
<td>49 CFR Part 663</td>
</tr>
<tr>
<td>Post Delivery Purchaser’s Requirement</td>
<td>All rolling stock procurements to the extent required by Federal law and regulations.</td>
<td>49 CFR Part 663</td>
</tr>
<tr>
<td>On-Site Inspector’s Report</td>
<td>Rolling Stock except for procurements of: - 10 or fewer vehicles; - 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer; - any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.</td>
<td>49 CFR Part 663</td>
</tr>
<tr>
<td>Lobbying</td>
<td>Procurements exceeding $100,000.</td>
<td>49 CFR Part 20 As of February 2011, OMB Office of Federal Financial Management has not adopted FAR 2.101 $150,000 simplified acquisition threshold standard.</td>
</tr>
<tr>
<td>Standard Form LLI and Quarterly Updates (when required)</td>
<td>Procurements exceeding $100,000 where contractor engages in lobbying activities.</td>
<td>49 CFR Part 20 As of February 2011, OMB Office of Federal Financial Management has not adopted FAR 2.101 $150,000 simplified acquisition threshold standard.</td>
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</tbody>
</table>
## D. OTHER MATTERS

<table>
<thead>
<tr>
<th>OTHER MATTERS</th>
<th>COMMENTS</th>
<th>STATUTORY OR REGULATORY REFERENCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Administration System</td>
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<td>49 CFR § 18.36(b)(2)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>49 CFR § 19.47</td>
</tr>
<tr>
<td>Record of Procurement History</td>
<td></td>
<td>49 CFR § 18.36(b)(9)</td>
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<tr>
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<td></td>
<td>49 CFR § 19.47</td>
</tr>
<tr>
<td>Protest Procedures</td>
<td></td>
<td>49 CFR § 18.36(b)(12)</td>
</tr>
<tr>
<td>Selection Procedures</td>
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<td>49 CFR § 18.36(c)(3)</td>
</tr>
<tr>
<td>Cost/Price Analysis</td>
<td></td>
<td>49 CFR § 18.36(f)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>49 CFR § 19.45</td>
</tr>
<tr>
<td>Justification for Noncompetitive Awards</td>
<td>If Applicable.</td>
<td>49 CFR § 18.36(b)(9) by implication</td>
</tr>
<tr>
<td></td>
<td></td>
<td>49 CFR § 19.46(b)</td>
</tr>
<tr>
<td>No Excessive Bonding Requirements</td>
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<td>49 CFR § 18.36(h)</td>
</tr>
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<td></td>
<td></td>
<td>49 CFR § 19.48(c)(5)</td>
</tr>
<tr>
<td>No Exclusionary Specifications</td>
<td></td>
<td>49 U.S.C. § 5325(h)</td>
</tr>
<tr>
<td>No Geographic Preferences</td>
<td>Except for A&amp;E Services</td>
<td>49 CFR § 18.36(c)(2)</td>
</tr>
</tbody>
</table>