



VENTURA COUNTY TRANSPORTATION COMMISSION

Procurement Policies and Procedures

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VENTURA COUNTY TRANSPORTATION COMMISSION

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TABLE OF CONTENTS

1. INTRODUCTION	1
A. PROCUREMENT TYPES	1
1. Materials, Supplies and Equipment	1
2. Professional Services	1
3. Construction.....	1
B. ROLES AND RESPONSIBILITIES.....	1
1. Approval Levels	1
2. Code of Conduct.....	2
3. Code of Ethics	2
2. PROCUREMENT POLICIES, STANDARDS, AND PROCEDURES	2
A. PROCUREMENT POLICIES AND STANDARDS	2
1. Full and Open Competition	2
2. Disadvantaged Business Enterprise	3
3. Emergency Purchases	3
4. Time and Material Contracts	3
5. Cost Plus Percentage of Cost Prohibited.	3
6. Tag-ons.....	3
7. Pre-qualified Bidders List.....	3
8. Economical Purchase	4
9. Awards to Lowest Qualified Responsible Contractor	4
10. Preference for Recycled Products.....	4
B. PROCUREMENT PROCEDURES	4
1. Procurement Planning and Written Procurement Methodology	4
2. Selecting a Method of Procurement and Authorization to Proceed.....	4
3. Cost and Price Analysis	4
4. Written Selection Procedures	5
5. Debarment and Suspension Check.....	5
6. Award of Contract	5
7. Protest Procedures	5
8. Procurement History	6

3. METHODS OF PROCUREMENT	6
A. CONVENIENCE PURCHASE (MICRO PURCHASE)	6
B. COMPETITIVE PROCUREMENT BY SMALL PURCHASE PROCEDURES	6
C. PROCUREMENT BY SEALED BID (FORMAL ADVERTISING)	7
D. PROCUREMENT BY COMPETITIVE PROPOSAL	8
E. TWO STEP PROCUREMENT FOR PROJECTS WITH FTA FUNDING.....	8
F. ARCHITECTURAL AND ENGINEERING (A&E) AND RELATED SERVICES	9
G. PROCUREMENT BY NONCOMPETITIVE PROPOSALS (SOLE SOURCE)	9
H. ROLLING STOCK.....	10
I. JOINT PROCUREMENT	11
J. PIGGYBACKING	11
K. REVENUE CONTRACTS	11
L. DISPOSAL OF SURPLUS AND/OR NON-REPAIRABLE MATERIALS	12
 4. CONTRACT PROVISIONS.....	 12
A. GENERAL CONTRACT PROVISIONS	12
B. CONSTRUCTION CONTRACT PROVISIONS	14
C. FEDERAL CONTRACT PROVISIONS	15

APPENDIX

EXHIBIT 1	PROCUREMENT PLANNING	16
	1.A STEP BY STEP REFERENCE GUIDE.....	17
	1.B PROCUREMENT METHODOLOGY OUTLINE.....	18
	1.C PROCUREMENT DECISION MAKING MATRIX AND AUTHORIZATION FORM	19
	1.D INDEPENDENT COST ESTIMATE SAMPLE FORM	20
EXHIBIT 2	RESOLUTION 91-05 CONTRACT PROTEST PROCEDURES	21
EXHIBIT 3	PROCUREMENT DOCUMENT CHECKLISTS AND CONTRACT CLAUSES	25
	3.A CONVENIENCE PURCHASE (MICRO PURCHASE)	26
	3.B COMPETITIVE PROCUREMENT BY SMALL PURCHASE	27
	3.C PROCUREMENT BY SEALED BID (FORMAL ADVERTISING)	28
	3.D PROCUREMENT BY COMPETITIVE PROPOSAL	31
	3.E PROCUREMENT BY NONCOMPETITIVE PROPOSALS (SOLE SOURCE).....	33
EXHIBIT 4	SOLE SOURCE JUSTIFICATION FORM	36
EXHIBIT 5	FEDERAL CONTRACT TABLE AND CLAUSES	37

I. INTRODUCTION

PURPOSE STATEMENT: Article VI of the Ventura County Transportation Commission's (VCTC) Administrative Code prescribes basic rules with regard to contracts, competitive bidding and other contracting methods. This document represents a further refinement of VCTC's procurement policies and procedures for all aspects of contract administration and was developed based on California Government and Public Contract Codes and the federal procurement procedures found in 2 CFR Part 200 and Federal Transit Administration (FTA) Circular 4220.1F. [The Caltrans Local Assistance Procedures Manual provides additional guidance for Federal Highway Administration \(FHWA\) funded federal-aid and state funded projects.](#) The purpose of these procurement standards and procedures is to ensure that materials and services are obtained in an effective manner and in compliance with state and federal requirements.

A. Procurement Types

1. **Materials, Supplies and Equipment.** Includes furnishings, machinery, fuel, vehicles, rolling stock, and other property used to conduct VCTC business.
2. **Professional Services.** Professional services include the following areas and/or disciplines:
 - Design support including engineering, surveying, architecture and other related specialists.
 - Construction Inspection and/or Inspection.
 - Right of Way and property appraisal and acquisition service.
 - Other services requiring special training or expertise.
3. **Construction.** Includes building, altering, repairing, installing or demolishing a physical structure.

B. Roles and Responsibilities

1. Approval Levels.

- (a) Contracts in the amount of Fifty Thousand Dollars (\$50,000.00) or greater shall be awarded by the Ventura County Transportation Commission.
- (b) The Executive Director of VCTC serves as the administrative officer of VCTC and administers all VCTC contracts. The Executive Director may execute contracts without prior approval on behalf of VCTC, for construction or to purchase or cause to be purchased, supplies, equipment, materials, and personnel services where the expenditure is less than Fifty Thousand Dollars (\$50,000), or when immediate measures are required to avert or alleviate damage to property, or to replace, repair, or restore damaged or destroyed property, of VCTC in order to ensure that the facilities of VCTC are available to serve the transportation needs of the general public, pursuant to and in compliance with the limitation and reporting

requirement of California Public Utilities Code (PUC) section 130235, subsections (a) and (b), as they may be amended from time to time. The Executive Director may delegate any and all purchasing activities.

- (c) Purchases less than Ten Thousand Dollars (\$10,000) may be approved by Department Heads with a signed authorization form.

2. Code of Conduct.

- (a) **Conflict of Interest.** Section VII of the Ventura County Transportation Commission Administrative Code establishes the basic rules and procedures with regard to potential conflicts of interest.
 - (b) **Avoiding Organizational Conflicts of Interest.** Any employee, officer, agent or board member involved in the solicitation, selection, award, or administration of contracts shall take care in carrying out procurements to:
 - 1. Identify, evaluate, and make known any instance of potential or known conflict;
 - 2. Identify measures to mitigate potential conflicts to avoid the conflict or the effects of the conflict, whether financial, personal or organizational;
 - 3. Take necessary actions to address violations, impose penalties or to proceed when in VCTC's best interest, despite a conflict; and
 - 4. Document steps taken or considered and document the justification for the conclusion reached, before proceeding with a contract.
3. **Code of Ethics.** Ventura County Transportation Commission's Adopted Code of Ethics establishes an ethical code of conduct for employees and board members and prohibits the solicitation and acceptance of gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors or parties to sub-agreements. The Code of Ethics also addresses confidentiality and behavior and specifies that disciplinary actions will be taken for violations.

2. PROCUREMENT POLICIES, STANDARDS, AND PROCEDURES

A. Procurement Policies and Standards

- 1. **Full and Open Competition.** Procurement transactions will be conducted in a manner providing full and open competition consistent with the standards stated in this section. Some of the situations considered to be restrictive of competition include but are not limited to:
 - a) Placing unreasonable requirements on firms in order for them to qualify to do business,

- b) Requiring unnecessary experience and excessive bonding,
- c) Noncompetitive pricing practices between firms or between affiliated companies,
- d) Splitting procurements to avoid competitive bidding,
- e) Using exclusionary or discriminatory specifications,
- f) Engaging in a practice whereby an organizational conflict of interest exists,
- g) Specifying only a brand name product instead of allowing an equal product or allowing an “equal” product without listing salient characteristics to be met,
- h) Making noncompetitive awards to any person or firm on a retainer contract for property or services not specified under the existing retainer contract,
- i) Any arbitrary action in the procurement process, and
- j) For ~~FTA~~federally funded projects, specifying in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

2. **Disadvantaged Business Enterprise (DBE) Program.** VCTC has an adopted policy and program to utilize DBE’s and firms as defined in 49 CFR Part 26 in all aspects of ~~FTA~~federal-funded contracting to the maximum extent feasible.
3. **Emergency Purchases.** In the event of an emergency, threat to public health, welfare, or safety, a contract may be awarded without proceeding with a formal competitive process. To the extent feasible, competition for the procurement shall be made when practical, given the circumstances of the emergency. Proper documentation shall be maintained.
4. **Time and Material Contracts.** For FTA funded projects, time and material type contracts will be used only after a determination has been made that no other contract is suitable and only if the contract includes a ceiling price that the contractor may exceed at his or her own risk.
5. **Cost Plus a Percentage of Cost Prohibited.** The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used for FTA funded projects.
6. **Tag-ons.** Tag-ons are defined as the addition of work that is beyond the scope of the original contract that amounts to a cardinal change and are subject to non-competitive procurement procedures. The use of tag-ons is prohibited for FTA funded projects.
7. **Pre-qualified Bidders List.** VCTC shall ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services

are current and include enough qualified sources to ensure maximum open and free competition. Also, VCTC will not preclude potential bidders from qualifying during the solicitation period.

8. **Economical Purchase.** Procurements shall be conducted in a cost effective manner which avoids the purchase of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements when practical to obtain a more economical purchase.
9. **Awards to Lowest Qualified Responsible Contractor.** VCTC will make awards only to qualified responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
10. **Preference for Recycled Products.** To the extent practicable and economically feasible, VCTC will provide a competitive preference for recycled products in FTA-funded projects pursuant to U.S. Environmental Protection Agency Guidelines.

B. Procurement Procedures

1. **Procurement Planning and Written Procurement Methodology.** During the planning stages of a project or procurement, a procurement methodology shall be completed for FTA funded projects greater than Three Thousand Five Hundred Dollars (\$3,~~05~~00) that details the necessity of the procurement; how the procurement will be carried out; identifies, evaluates and provides remedies for any organizational conflicts of interest; identifies the rationale for the method of procurement; and the basis for the contract price. A step by step reference guide is included in Exhibit 1A and an outline of a Procurement Methodology is included in Exhibit 1B.
2. **Selecting a Method of Procurement and Authorization to Proceed.** For FTA funded procurements over Three Thousand Five Hundred Dollars (\$3,~~05~~00), the Project Manager shall select the method of procurement and obtain authorization to proceed by filling out the Procurement Decision Matrix and Approval Form included as Exhibit 1C.
3. **Cost and Price Analysis.** VCTC shall perform a cost or price analysis in connection with each procurement using FTA funds greater than \$3,~~05~~00; including contract modifications. Independent Cost Estimates (ICE) shall be conducted before receiving bids or proposals and documented on an Independent Cost Estimate Form (Exhibit 1D) and included as part of the procurement history. The method and degree of analysis shall depend on each procurement situation.
 - a) **Cost Analysis.** A cost analysis must be performed when the bidder is required to submit the elements (i.e., labor hours, overhead, materials, etc.,) of estimated cost, (e.g., under professional consulting and architectural and engineering services contracts). A cost analysis will be necessary when adequate price competition is lacking and for

sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

- b) **Price Analysis.** A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.
 - c) **Profit.** VCTC shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical areas for similar work.
4. **Written Selection Procedures.** VCTC shall prepare selection procedures for procurement transactions with FTA funds. The selection procedures shall be written and shall incorporate: a clear and accurate description of the technical requirements for the materials, products, or services to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. The procedures shall identify the requirements which the bidders must fulfill and factors to be used in evaluating bids or proposals.
5. **Debarment and Suspension Check.** Any FTA funded procurement, contract, or vendor contract exceeding Twenty-five Thousand Dollars (\$25,000) is subject to the Federal Excluded Parties List (EPLS/SAM). After all qualified bids or quotes have been opened the EPLS/SAM database must be referenced at www.sam.gov, which contains all businesses that have been barred or suspended from receiving federal funds or participating in federal contracts. The project manager will perform an EPLS/SAM business name search on each of the businesses for specific procurements.
- a) If a business reference returns a positive listing on the EPLS/SAM, a printout of the web page will be included in the procurement file, while a second copy will be forwarded to the bidding business with a notice that they have been removed from consideration in the procurement.
 - b) If the EPLS/SAM search returns no listing on a specific business, a copy of the web page, showing the negative return, will be made and included in the procurement file.
6. **Award of Contract.** Unless all bids are rejected, award shall be by written or electronic notice. For a Sealed Bid type of procurement, when the award is made to other than the lowest responsible bidder, VCTC will document in the procurement files the reason for not choosing the lowest bid.

7. **Protest Procedures.** VCTC will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. VCTC will follow the procedures established for protests to contracts awarded and bids or proposals on contracts received by VCTC pursuant to VCTC Resolution No. 91-05, Contract Protest Procedures, found as Exhibit 2 to this document.

FTA Appeals: A protestor adversely affected by a decision of VCTC may submit a protest regarding an FTA-funded procurement to the Federal Transit Administration (FTA) in accordance with the provisions of FTA Circular 4220.1F or its successors (FTA Circular). Under the provision of the FTA Circular, FTA will only review protests regarding:

- (i) The alleged failure of VCTC to have written protest procedures or the alleged failure to have followed such protest procedures;
- (ii) The alleged failure of VCTC to review a complaint or protest; or,
- (iii) Alleged violations of federal law or regulations by VCTC.

In accordance with the FTA Circular, such a protest must be filed no later than five (5) working days after the protestor knew or should have known of VCTC's final decision that resulted in the alleged failure or violation listed above. VCTC may proceed with the procurement in spite of a pending protest to the FTA under the following conditions:

- (i) The items to be procured are urgently required;
- (ii) Delivery or performance will be unduly delayed by failure to make the award promptly; or
- (iii) Failure to make prompt award will otherwise cause undue harm to VCTC or the Federal government.

8. **Procurement History.** VCTC will maintain records of all FTA funded procurements in sufficient detail to document the significant history of the procurement. These records shall include but are not limited to the following: the Procurement Checklists found in Exhibit's 3A through Exhibit 3E, rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

3. METHODS OF PROCUREMENT

A. Convenience Purchase (Micro-Purchases)

For purchases of Five Thousand Dollars (\$5,000.00) or less or less than Three Thousand Five Hundred Dollars (\$3,0500) for projects with FTA state or federal funding, informal or convenience purchase/Micro-Purchase procedures may be used. Micro-Purchases may be procured without obtaining competitive quotations. However, for purchases with FTA funds, some documentation shall be maintained to support that the price is fair and reasonable and to document how the procurement determination was derived. The Reasonable Price Determination Form (Exhibit 1D) may be used for documentation.

B. Competitive Procurement by Small Purchase Procedures

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$25,000 in the aggregate, ~~or the amount permitted by federal law~~. Price or rate quotations shall be obtained from an adequate number of qualified sources (usually three or more). Normally, a Request for Quotations (RFQ) will be issued to obtain quotes, but may be done verbally. The purchase file shall reflect the results of competition or document lack of it and otherwise document how the price was determined to be fair and reasonable. The Form in Exhibit 1D may be used to document the fair and reasonable price.

C. Procurement by Sealed Bids (Formal Advertising)

Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

1. The sealed bid method shall be the preferred method for acquiring property, procuring construction, and other services, if the following conditions apply:
 - a) A complete, adequate, and realistic specification or purchase description is available;
 - b) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - c) The procurement lends itself to a firm fixed price contract; and
 - d) The selection of the successful bidder can be made principally on the basis of price and those price-related factors are listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken.
2. If sealed bids are used, the following apply:
 - a) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
 - b) The invitation for bids, which will include any specifications and pertinent attachments, shall describe the property or services sought in sufficient detail in order for a bidder to properly respond;
 - c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
 - d) A firm fixed-price contract award will be made in writing to the lowest qualified responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid

when prior experience indicates that such discounts are usually taken advantage of; and

- e) Any or all bids may be rejected if there is a sound, documented business reason.
- f) If, after rejecting bids received, VCTC determines and declares by a two-thirds (2/3) vote of the Commission's voting membership that, in its opinion, the procurement may be made at a lower price in the open market, VCTC may proceed to make such procurement in the open market without further observance of the provisions regarding contracts, bid or advertisements.

D. Procurement by Competitive Proposal

Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following apply:

1. Requests for Proposals (RFP) will be publicized and identify all evaluation factors and their relative importance;
2. Proposals will be solicited from an adequate number of qualified sources;
3. VCTC shall use a "Proposal Evaluation Form" as a guide for conducting technical evaluations of the proposals received and for selecting awardees;
4. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and,
5. For projects with FTA funding, awards may also be made on a "best value" basis when the RFP states award will be so based and identifies the factors on which award will be made. The evaluation factors should reflect subject matter and elements most important to VCTC and may include, but not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance and management plan. The determination of "best value" will be based on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

E. Two Step Procurement for Projects with FTA Funding

Two-step procedures may be used in both sealed bid and competitively negotiated procurements.

1. Review of Technical Qualifications and Approach. The first step is review of the prospective contractors' technical approach and technical qualifications to carry out that approach. The competitive range may be reduced to prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.

2. Review of Bids and Proposals Submitted by Qualified Prospective Contractors. The second step consists of soliciting and reviewing complete bids (sometimes referred to as “two-step sealed bidding”) or proposals (as in “competitive negotiations”), including price, submitted by each prospective contractor determined to be qualified. It is recommended that bids or proposals should be solicited from at least three qualified sources.

F. Architectural and Engineering (A&E) and Related Services

Procurement of A&E and related services applicable to or leading to construction projects with FHWA federal aid or state funds shall follow the consultant selection procedures outlined in Chapter 10 of the Caltrans Local Assistance Procedures Manual. with Federal funding

FTA funded procurements shall use qualifications-based procedures outlined in the “Brooks Act.” Such services include program management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and construction management applicable to construction projects including research, planning, development, design, construction alteration, or repair of real property. Such services that are not construction-related will use procedures identified in subparagraphs “A” through “E” above.

The Brooks Act requires the following steps:

1. Evaluate the qualifications of all offerors without considering price and determine the most qualified offeror.
2. Open the price proposal of and conduct negotiations with only the most qualified offeror to achieve a fair and reasonable price.
3. If agreement on a fair and reasonable price with the most qualified offeror is not achieved, it is eliminated from the process and can no longer be involved, and negotiations may be conducted with successive offerors in descending order of qualification.

G. Procurement by Noncompetitive Proposals (Sole Source)

Procurement by noncompetitive proposal is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Adequate documentation is required for procurement by noncompetitive proposal. An example Sole Source Justification Form is included in Exhibit 4.

1. Procurement by noncompetitive proposals may be used only when the procurement is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:
 - a) The item is available only from a single source;

The property or services are available from one source if one of the conditions described below is present:

- 1) Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the recipient only from one source and has not in the past been available to the recipient from another source.
 - 2) Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
 - 3) Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - 4) Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.
- b) The public exigency or emergency for the procurement will not permit a delay resulting from a competitive solicitation.
 - c) The FTA authorizes noncompetitive proposals; or
 - d) After solicitation of a number of sources, competition is determined inadequate.
2. Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.
 3. Contract change orders shall be considered sole source procurements when a change order is not within the scope of the original contract. Therefore, the procurement must meet the above conditions and obtain the appropriate approvals.

H. Rolling Stock

1. FTA requirements. Third party contracts to acquire rolling stock must include provisions to ensure compliance with applicable FTA requirements.
2. Pre-Award Buy America Audit. A pre-award audit shall be completed before entering into a formal contract for the purchase of rolling stock. A "Pre-

Award Certification” shall be signed by the bidder/proposer and included with the bid. The Certification requires the bidder to attest to compliance with Buy America.

The bidder shall supply a list of the components and subcomponent parts of the rolling stock. The listing shall include the manufacturer of the parts, their country of origin, the cost or percentage of the vehicle cost, and the location of the final assembly point.

3. Bus Testing. Buses procured using federal resources shall have an Altoona Certification to be eligible for Federal (FTA) reimbursement. Rolling stock to be procured shall be certified through the Altoona Bus Testing Center.
4. FTA Civil Rights Office Notification of Award. For transit vehicle procurements, the FTA Civil Rights office must be notified within 30-days of the award using the on-line form found at:
<https://www.surveymonkey.com/r/vehicleawardreportsurvey>.
5. Onsite Inspection. For procurements over ten (10) buses, final inspection shall be conducted at the manufacture’s site before taking acceptance of rolling stock. Full payment to the vendor shall not be made until all deficiencies are noted and resolved or corrected.
6. Post-Delivery/Audit. Post Audit must be completed before application is made for title to the vehicle(s). The project manager is required to certify that the vehicles meet the requirements and the post-delivery audit is complete. The project manager accomplishes this by signing the Post-delivery Audit Certification.

Post-Delivery Audit requires a complete visual inspection and road test that the rolling stock meets the specification of the contract. Buy America provisions require that items in the pre-award audit are consistent.

I. Joint Procurement

For projects with FTA funding, VCTC may participate in a joint procurement with one or more agencies or may consider participation in FTA-sponsored “Procurement Pool” if the procurement is consistent with all applicable FTA and other federal requirements, including required clauses and certifications. Financial benefit will be weighted prior to engaging in such procurement. A contract will be awarded to a single vendor, who in turn will enter into separate contract with VCTC.

J. Piggybacking

Piggybacking is an assignment of existing contract rights to purchase supplies, equipment or services. As an FTA grantee, VCTC may assign or obtain contractual rights to purchase goods and services, provided the original contract contains the appropriate “assignability provision” and the items or services were federally procured including all applicable federal clauses and certifications.

K. Revenue Contracts

VCTC may issue contracts to generate revenue. If there are limited contracting opportunities (i.e. several potential competitors so there is more demand than supply), a competitive process will be used to provide an equal chance to obtain the limited opportunity. If contract opportunities are open (i.e. there's more supply than demand), competition is not necessary.

L. Disposal Of Surplus and/or Non-Repairable Materials

The Executive Director shall have and may delegate the authority to dispose of surplus and/or non-repairable VCTC property or material which either has no further financial record value or has an estimated fair market value of \$5,000 or less per item or batch of the same item.

Disposal of property or materials with any financial record value over \$5,000 or for VCTC property or materials which have an estimated fair market value over \$5,000 shall be by determination of the Ventura County Transportation Commission.

In any event the process for disposal shall take into consideration the cost of employee time and effort and related expenses associated with it. Such expenses can include, but are not limited to, storage facilities, control systems, advertising and display of items for bidding. The following disposal requirements apply depending on the estimated fair market value of the items:

- a. Upon written determination, items that are determined to be broken, damaged or obsolete such that there is no perceived fair market value may be thrown away or contributed to a local recognized charity.
- b. Items with any perceived fair market value will be disposed of by the seeking of bids or assigned to an auction or sales company which has the expertise/facilities to dispose of the property. Items for which no bids are received may be thrown away or contributed to a local recognized charity.

4. CONTRACT PROVISIONS

A. General Contract Provisions.

The following provisions shall be included in VCTC contracts:

1. 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. (Contracts other than small purchases).
2. Termination for cause and for convenience by the grantee or sub grantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of \$10,000).
3. Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of

October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60) (All federally-funded contracts awarded in excess of \$10,000).

4. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All federally-funded contracts for construction or repair).
5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented in Department of Labor regulations (29 CFR Part 5) (All federally-funded construction contracts).
6. Compliance with Sections 103 and 107 of the Contract Work Safety Standards Act (40 U.S.C. 327-330) as supplemented by the Department of Labor regulations (29 CFR Part 5) (Federally-funded construction contracts in excess of \$2,000 and in excess of \$2,500 for other contracts which involve the employment of mechanics laborers).
7. Notice of any VCTC requirements and regulations pertaining to reporting.
8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
9. Any requirements and regulations pertaining to copyrights and rights in data.
10. Access to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
11. Retention of all required records for three years after VCTC makes final payments and all other pending matters are closed.
12. Liquidated damages assessments must be at a specific rate per day of overrun and must be specified in the contract for projects receiving FTA funds.
13. Exercise of Options. Options shall be exercised only after a written determination is made that such exercise is the most advantageous method of fulfilling the needs of VCTC, price and other factors considered.
 - a. VCTC must ensure that the exercise of an option is in accordance with the terms and conditions of the option provisions stated in the initial contract awarded.
 - b. An option may not be exercised unless it has been determined that a new solicitation would fail to produce a better price or a more advantageous price than that offered by the option
14. Payments.

- a) **Advance Payments.** Advance payment using FTA funds are prohibited unless prior written concurrence is obtained from FTA.
 - b) **Progress Payments.** Progress payments may be made on FTA funded projects based on the costs incurred and with adequate security for which progress payments are made.
15. **Insurance requirements.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format as least as broad as CG 20 38 04 13.

B. Construction Contract Provisions.

For construction or facility improvement contracts or subcontracts exceeding \$100,000, the minimum requirements shall be as follows:

- a) **Bid Guarantee.** A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon his acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b) **Performance Bond.** A performance bond on the part of the contractor for 100 percent of the contract price. A “performance 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.
- c) **Payment Bond.** To ensure payment of people supplying labor and material for a contract using FTA funds, payment bond minimums are as follows for the stated contract amounts:
 - i. Less than \$1 Million. 50% of the contract price applies.
 - ii. More than \$1 Million, but less than \$5 Million. 40% of the contract price applies.
 - iii. More than \$5 Million. Two and one half million dollars applies.
- d) **Seismic Safety.** A provision on seismic safety shall be included in contracts using FTA funding for construction of new buildings or additions to existing buildings.
- e) **Prevailing Wages.** Any FTA assisted project exceeding \$2,000 shall include a provision requiring compliance with the Davis-Bacon Act which requires laborers and mechanics to be paid prevailing wages as determined by the Secretary of Labor and to pay them not less than once a week. Each solicitation should include the current prevailing wage determination. Since the State of California Department of Industrial Relations also issues prevailing wage determinations which may differ from those of the Labor

Secretary, VCTC will require contractors to refer to both the Federal and State wage determinations and pay the higher amount if there is conflict. State funded contracts over \$1,000 up to \$2,000 shall include prevailing wage requirements using only State wage determinations.

- f) **Other Provisions.** As addressed further in FTA Circular 4220.1F, provisions pertaining to equal employment opportunity, the Copeland “Anti-Kickback” Act, the Contract Work Hours and Safety Standards Act, Buy America, project labor agreements and accessibility may be required. Particular contract dollar thresholds may dictate when some of these provisions are necessary.

C. Federal Contract Provisions

Pursuant to FTA Circular 4220.1F, specific federally mandated provisions (clauses) as identified in Exhibit 5 will be included in VCTC solicitations and contracts depending on factors such as the type and dollar value of the procurement. In addition and in compliance with some of those provisions (e.g. Buy America, Lobbying) certifications will be obtained from bidders or offerors to denote their compliance with the applicable requirements.

[Required Contract Provisions for FHWA Federal-aid or State funded procurements are provided in Chapter 12 of the Caltrans Local Assistance Procedures Manual at: http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm](http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm)

EXHIBIT 1 PROCUREMENT PLANNING

1A STEP BY STEP REFERENCE GUIDE 17
1B PROCUREMENT METHODOLOGY GUIDE 18
1C PROCUREMENT DECISION MAKING MATRIX AND APPROVAL FORM 19
1D INDEPENDENT COST ESTIMATE SAMPLE FORM 20

EXHIBIT 1A: STEP BY STEP REFERENCE GUIDE

1. Project Development

- a. Project Scope is defined
- b. Project Schedule is defined
- c. Project Budget is defined

2. Federally Funded Projects

- a. Project must be included in the Transportation Improvement Program
- b. Project must satisfy Environmental Compliance
- c. Project funds must be Appropriated/Programmed
- d. Receive Authorizations to Proceed

3. Procurement Development

- a. Determine Procurement Method/Process (Micro Purchase, Informal, Formal etc..)
- b. Prepare an Independent Cost Estimate for FTA funded Projects
- c. Determine what State/Federal requirements apply
- d. Identify Contract Type and Required Clauses (PO/Contract)?
- e. Identify the required Contract Administration requirements
- f. Identify DBE Requirements
- g. Develop Selection Method and Selection Criteria

4. Procurement Approvals and Award

- a. Signed Certifications
- b. Bonds and Insurance Requirements
- c. Execute Contract

5. Project Management

- a. Set up fiscal accounting
- b. Ongoing Contract Management
- c. Ongoing Financial
- d. Ongoing Status Reporting
- e. Project Close Out and Prepare Procurement History

EXHIBIT 1B: PROCUREMENT METHODOLOGY FOR FTA FUNDED PROCUREMENTS (*Sample*)

Purpose of a Methodology. Procurement Methodologies help the Project Manager throughout the procurement process and in the decision making process. The Procurement Methodology also provides background for the decision that was made in the procurement process all the way through to selection of the contractor. FTA suggests that a copy of the Procurement Methodology be included in the procurement history for FTA funded projects.

Developing a Methodology. The following steps outlined below provide a guide for the development of a procurement methodology.

SAMPLE

Project Name – (Procurement Methodology for *Construction/A&E/Purchase of Supplies*)

- a) Procurement Objective -- What is to be Procured?
- b) Estimated cost.

What Procurement Process will be used and Why?

- a) What is the Procurement Method to be used?
- b) Why is this the preferred method?
- c) Proposed Evaluation Criteria and Weights and Special Considerations.
- d) Public Notification – Duration time for bidders to respond, listing of locations of notification (papers, journals, places, websites).
- e) Solicitations, Evaluations and Award process (who communicates, who evaluates, recommends, selects).
- f) Adequate number of resources (Solicitation List developed # of potential responders).
- g) Type of contract or binding document that will be used.

Post Award Review

- a) Was the methodology followed?
- b) Was there adequate response? If not, what were potential reasons for a low or non-response?
- c) Were the proposals within alignment with the independent cost estimate? If not, what might have been the reasons for the discrepancy?
- d) Did the criterion and associated weights provide for a sound basis for vendor selection?
- e) What was the justification for selection?
- f) Who received the award? Total amount?

EXHIBIT 1C: PROCUREMENT DECISION MATRIX AND AUTHORIZATION FORM

<input type="checkbox"/> Independent Cost Estimate (ICE) – for FTA procurements over \$3,9500	
1. Competitive Small Purchase <input type="checkbox"/> Amount \$39500 to \$25,000 <input type="checkbox"/> Reasonable number of vendor quotes obtained <input type="checkbox"/> Fair and Reasonable Price	3. Sole Source <input type="checkbox"/> Only one source available <input type="checkbox"/> Approved by FTA – Sole Source <input type="checkbox"/> Competition is inadequate after public solicitation <input type="checkbox"/> Emergency Procurement This is a health & safety issue or necessary to continue operations or to avoid an immediate danger to life or property. 4. Joint Procurement <input type="checkbox"/> Financially beneficial <input type="checkbox"/> Consistent with FTA and Federal Requirements 5. Piggybacking <input type="checkbox"/> Financially beneficial <input type="checkbox"/> Original Contract Contains Assignability provision
2. Competitive Procurement <input type="checkbox"/> Amount <input type="checkbox"/> Multiple Sources Available <input type="checkbox"/> Not an Emergency Purchase a. <u>Sealed Bid – Invitation for Bid (IFB)</u> <input type="checkbox"/> Complete & adequate specification or purchase description <input type="checkbox"/> 2 or more responsible bidders willing to complete <input type="checkbox"/> Selection can be made on basis of price <input type="checkbox"/> Procurement suitable for firm, fixed price b. <u>Competitive Proposal – Request for Proposal (RFP or RFQ)</u> <input type="checkbox"/> Complete specification not feasible <input type="checkbox"/> Bidder input needed for specification <input type="checkbox"/> 2 or more responsible bidders willing to compete <input type="checkbox"/> Discussion needed with bidder after receipt of proposals, prior to award c. <u>Informal Competitive Bidding – Two Step Procurement</u> <input type="checkbox"/> Does not require complicated solicitation evaluation <input type="checkbox"/> Following a Review of Technical Qualifications and Approach, more than one qualified source is available d. <u>Architectural and Engineering (A&E) and Related Services</u> <input type="checkbox"/> Evaluation of Technical Qualification of Proposer <input type="checkbox"/> Negotiations with bidder prior to award <input type="checkbox"/> Fair and Reasonable Price Determination	

Approved By: _____ Date: _____

EXHIBIT 1D: INDEPENDENT COST ESTIMATE/FAIR AND REASONABLE PRICE DETERMINATION *SAMPLE FORM*

ITEM/SERVICE/PROJECT DESCRIPTION: _____

METHOD OF OBTAINING THE ESTIMATE: The price(s) paid for item(s) received under this purchase are determined to be fair and reasonable, based on the following (as checked):

____ Adequate competition

____ Current price lists

____ Catalog price

____ Prices found reasonable on recent previous purchases

____ Advertisements

____ Similar items in a related industry

____ Independent price estimate (based on a good understanding of what the item should cost)

____ Other basis. Explain:

_____.

INDEPENDENT COST ESTIMATE DETAILS:

TOTAL COST: \$ _____

Prepared By: _____

Date Prepared: _____

EXHIBIT 2: PROTEST PROCEDURES

RESOLUTION 91-05

A RESOLUTION OF THE VENTURA COUNTY TRANSPORTATION COMMISSION ADOPTING CONTRACT PROTEST PROCEDURES

SECTION I.

THE VENTURA COUNTY TRANSPORTATION COMMISSION DOES HEREBY DETERMINE AND FIND AS FOLLOWS:

- A. The Ventura County Transportation Commission (hereinafter, "VCTC") does from time to time solicit bids from contractors for work and/or proposals for professional services; and
- B. There is a potential that an Interested Party (as defined in Section II.A, below), may at some time wish to protest the determinations hereinafter set forth as protestable; and
- C. It is in the interest of the health, safety and general welfare of the residents of Ventura County and potential Interested Parties that the Commission establish procedures for protests to contracts awarded by, and bids or proposals on contracts received by VCTC, as hereinafter set forth:

SECTION II.

NOW, THEREFORE, THE VENTURA COUNTY TRANSPORTATION COMMISSION DOES HEREBY RESOLVE AS FOLLOWS:

A. GENERAL.

- 1. This policy specifies procedures for Interested Parties (as hereinafter defined) protesting the following staff actions:
 - (a) A written notice, by, or on behalf of, the Executive Director denying a bidder's or proposer's request for a change in contract requirement; and
 - (b) A written recommendation to Ventura County Transportation Commission ("VCTC") or a decision made by, or on behalf of, the Executive Director to disqualify a proposer, bidder or subcontractor; and
 - (c) A written recommendation by, or on behalf of, the Executive Director that VCTC award a contract to a particular bidder or proposer.
- 2. This policy does not govern any VCTC staff decision not listed in this Section II.A.
- 3. When a protest has been properly filed, pursuant to the procedures hereinafter set forth, prior to contract award, the VCTC shall not award the contract prior to deciding the protest. When a protest has been properly filed before the opening

of bids, bids shall not be opened prior to the VCTC decision on the protest. When a protest has been filed properly after the contract is awarded, the contract shall not be executed until the protest is resolved by the VCTC.

4. Materials submitted as a part of the protest resolution process will be available to the public except to the extent that:
 - (a) The information is designated proprietary by the person submitting the information to VCTC. If the person submitting material to VCTC considers that the material contains proprietary material which should be withheld, a statement advising of this fact shall be affixed to the front page of the material submitted and the alleged proprietary information must be specifically identified in the body of the materials wherever it appears.

B. FILING A PROTEST

1. Protests may be filed only by "Interested Parties". "Interested Parties" are defined as (a) bidders who have responded, and prospective bidders who may respond, to a request for bids, (b) prospective professional services contractors who may respond, and professional service contractors who have responded, to a request for proposals on a VCTC contract and/or a generally funded contract, and (c) subcontractors or suppliers at any tier who have a substantial economic interest in an award, a provision of the specifications, or a bid or proposal submitted to VCTC by a prime contractor, or in the interpretation of the provisions of such documents.
2. Protests to a contract requirement must be filed at least ten (10) working days prior to bid opening or the deadline for receiving proposals. Protests to VCTC staff actions must be filed within five (5) working days of receipt by the bidder or proposer from the Executive Director, or a person authorized to act on behalf of the Executive Director, or written notice of the VCTC staff action.
3. Protests shall be addressed to Ventura County Transportation Commission, 950 County Square Drive, Suite 207, Ventura, California, 93003, or such other address as may appear on the request for proposal for bid solicitation.
4. Protests shall be in writing and contain a statement of the ground(s) for protest. At least ten (10) copies of the protest shall be submitted by the protestor in the time and manner specified in this section.
5. The Executive Director, or an authorized person acting on behalf of the Executive Director, shall provide notice, by telephone, telephone facsimile (FAX) or by letter, to all bidders and/or persons who have submitted proposals on the contract which is subject to the protest known to VCTC. Such notice shall state that a protest has been filed with VCTC and identify the name of the protestor. The notice shall be given not more than five (5) working days after receipt of a properly filed protest. The notice shall state that bidders will receive further information relative to the protest only by submitting a written request for further information to the Executive Director.

C. VCTC PRELIMINARY RESPONSE TO A PROTEST: MEETING WITH STAFF TO ATTEMPT EARLY RESOLUTION OF THE PROTEST

1. Not more than ten (10) working days after receipt of a properly filed protest, the Executive Director, or a person authorized to act on his or her behalf, shall

prepare and distribute to the protestor and to all persons specified in Section B.5, above:

- (a) A written preliminary response to the protest. This response shall include a brief explanation of the reasons why the protested VCTC staff action is justified; and
 - (b) The time, date and place of the meeting described in Section C.2, below.
- 2. The Executive Director and/or appropriate VCTC staff shall meet with the protestor to discuss and attempt to resolve the protest within thirty (30) days of the response required by section C.1(a) above.
- 3. After the meeting required by Section C.2, above the protestor shall within five (5) working days give the Executive Director written notice that either the protest is withdrawn or, alternately, that the protestor requests further consideration of the protest. In the event that the protestor fails to file the notice required by this Section C.3 at the office of the Executive Director within five (5) working days after the meeting, the protest shall be deemed withdrawn.

D. FURTHER INVESTIGATION

- 1. If a protest is not withdrawn pursuant to Section C.3, above, the Executive Director shall, within thirty (30) days of receipt of the notice from the protestor described in Section C.3, above, further investigate the protest with the assistance of the VCTC staff.
- 2. The Executive Director may contract for third-party consulting services when necessary to investigate a protest. The Executive Director may negotiate with the protestor and other interested parties the sharing of the cost of such consulting services.
- 3. As part of the investigation, the Executive Director shall establish a reasonable time within which VCTC, the protestor, and other interested parties shall exchange all documents and arguments relevant to the protest; provided, however, that such time shall not exceed thirty (30) days without the concurrence of the protestor and the Executive Director.

E. INTENDED DECISION: COMMENTS BY PROTESTOR AND OTHER PARTIES

- 1. Following investigation, the Executive Director shall, within thirty (30) days, prepare and distribute to the protestor and all persons specified in Section B.5:
 - (a) An intended decision recommending actions which the Executive Director believes the VCTC should take to resolve the protest and specifying the reasons for the recommended action of the VCTC.
 - (b) A statement of the date within which the protestor and other persons must submit written comments with respect to the intended decision. Such date shall allow a reasonable period for rebuttal and shall vary according to the complexity of the particular protest;
 - (c) Given written notice to all Interested Parties of the time, date and place of the VCTC meeting at which the protest will be considered.

2. The following materials shall be included in the agenda package sent to VCTC members prior to the VCTC meeting and shall be available to any person at the VCTC office at least five (5) working days before the hearing:
 - (a) The intended decision described in Section E.1(a), above.
 - (b) All written comments received within the submittal period described in Section E.1(b), above.
 - (c) If the Executive Director has revised his/her intended decision since its distribution pursuant to Section E.2(a), above, a written description of the new intended decision and the reasons for revision.

F. VCTC CONSIDERATION

1. At the hearing, VCTC staff and any person may present evidence relating to the protest. At the beginning of the hearing, the Chair of the VCTC may announce time limits on testimony and other procedural rules which, in the opinion of the Chair, are reasonable necessary to preclude repetitious or irrelevant testimony and afford all persons wishing to testify the opportunity to be heard.
2. In rendering its decision on the protest:
 - (a) VCTC may adopted or amend the intended decision and findings of fact prepared by the Executive Director and Staff; or
 - (b) Make findings and adopt a decision different from the findings and intended decision of the Executive Director; or
 - (c) Elect to defer its decision and direct VCTC staff
 - (d) To Further investigate the protest; or
 - (e) Hire an impartial hearing officer to conduct a hearing and prepare a written recommended decision, including findings of fact, to be returned to VCTC for decision which shall be made pursuant to the procedures outlined in this Section.

EXHIBIT 3: PROCUREMENT DOCUMENT CHECKLISTS AND CONTRACT CLAUSES

3A. CONVENIENCE PURCHASE (MICRO PURCHASE)	26
3B. COMPETITIVE PROCUREMENT BY SMALL PURCHASE	27
3C. PROCUREMENT BY SEALED BIDE (FORMAL ADVERTISING)	28
3D. PROCUREMENT BY COMPETITIVE PROPOSAL	29
3E. PROCUREMENT BY NONCOMPETITIVE PROPOSALS (SOLE SOURCE)	30

Exhibit 3A: Convenience Purchase Checklist (Micro-Purchases Less than \$3,~~0~~500)

Element	Completed	N/A
No Splitting -- There is no evidence in this procurement that the grantee is splitting procurements to avoid competition. FTA C 4220.1F, VI, 3. a		
Fair and Reasonable Price Determination -- The purchase file contains documentation of a determination that the price is fair and reasonable and how this determination was derived. FTA C 4220.1F, VI, 3. a		
Micro - Purchase Davis Bacon -- This is a construction purchase order between \$2,000 and \$3,000, and the Davis Bacon Act has been made applicable. If this is not for construction, check NA. FTA C 4220.1F, VI, 3. a		

Exhibit 3B: Small Purchase Procurement Checklist (Less than \$25,000)

Element	Yes	N/A
Independent Cost Estimate The grantee made and documented an independent cost estimate before receipt of proposals.		
Unreasonable Qualification Requirements This solicitation did not contain unreasonable requirements placed on firms in order for them to qualify to do business.		
Arbitrary Action There was no arbitrary action in the procurement process. (An example of arbitrary action is when award is made to other than the contractor who most satisfied all the grantee's requirements as specified in the solicitation and as evaluated by staff.)		
Brand Name Restrictions A "brand name or equal" specification is used and the solicitation has identified the minimum needs and clearly set forth those salient physical and functional characteristics of the brand name required by the grantee. If the solicitation specifies "brand name" only without specifying an equal or listing the physical or functional characteristics needed, check Deficient. If the procurement does not specify a "brand name", check NA.		
Geographic Preferences The solicitation contains no in-State or local geographic preference except where Federal statutes mandate or encourage them.		
Contract Term Limitation The contract period of performance for rolling stock and replacement parts does not exceed five (5) years inclusive of options without prior written FTA approval. For all other types of contracts, the procurement file contains evidence that the contract term is based upon sound business judgment.		
Price Quotations Price or rate quotations were obtained from an adequate number of qualified sources.		
Clear, Accurate, and Complete Specification A complete, adequate, and realistic specification or purchase description was available and included any specifications and pertinent attachments that define the items or services sought in order for the bidder to properly respond.		
Cost or Price Analysis Either a cost analysis, with associated profit negotiation, or a price analysis was performed and documented in the procurement file with respect to the initial contract award. Also cost analysis was performed when negotiating contract modifications unless price reasonableness was established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.		
Written Record of Procurement History The file contains records detailing the history of this procurement. At a minimum, these records include: (1) Rationale for the method of procurement, (2) Selection of contract type, (3) Reasons for contractor selection or rejection, and (4) Basis for the contract price. Check "Not Deficient" if #3 & 4 are recorded.		
Clauses This contract contains the appropriate FTA required clauses. The contract clauses located in the Master Agreement should be used to determine the applicability of the clauses to the procurement type. FTA C 4220.1F, Appendix D, and The Best Practices Procurement Manual, Appendix A.1, can be used to determine the applicability of the specific language of a clause that a grantee may use.		

Exhibit 3C: Competitive Procurement by Sealed Bids

Element	Yes	N/A
Independent Cost Estimate The grantee made and documented an independent cost estimate before receipt of proposals.		
Unreasonable Qualification Requirements This solicitation did not contain unreasonable requirements placed on firms in order for them to qualify to do business.		
Arbitrary Action There was no arbitrary action in the procurement process. (An example of arbitrary action is when award is made to other than the contractor who most satisfied all the grantee's requirements as specified in the solicitation and as evaluated by staff.)		
Brand Name Restrictions A "brand name or equal" specification is used and the solicitation has identified the minimum needs and clearly set forth those salient physical and functional characteristics of the brand name required by the grantee. If the solicitation specifies "brand name" only without specifying an equal or listing the physical or functional characteristics needed, check Deficient. If the procurement does not specify a "brand name", check NA.		
Geographic Preferences The solicitation contains no in-State or local geographic preference except where Federal statutes mandate or encourage them.		
Contract Term Limitation The contract period of performance for rolling stock and replacement parts does not exceed five (5) years inclusive of options without prior written FTA approval. For all other types of contracts, the procurement file contains evidence that the contract term is based upon sound business judgment.		
Price Quotations Price or rate quotations were obtained from an adequate number of qualified sources.		
Contract Term Limitation The contract period of performance for rolling stock and replacement parts does not exceed five (5) years inclusive of options without prior written FTA approval. For all other types of contracts, the procurement file contains evidence that the contract term is based upon sound business judgment.		
Written Procurement Selection Procedures The grantee has written selection procedures and the solicitation also identifies all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.		
Solicitation Prequalification Criteria The solicitation required prequalification of persons, firms, or products. The list is current, includes enough qualified sources to ensure maximum full and open competition, and potential bidders are not precluded from qualifying during the solicitation period from issuance of the solicitation to its closing date. If the solicitation does not contain a prequalification requirement, check NA.		
Award to Responsible Contractor The grantee made a determination that it was awarding to a responsible contractor considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.		
Sound and Complete Agreement This contract is a sound and complete agreement. In addition, it includes remedies for breach of contract and provisions covering termination for cause and convenience.		
Two Bidders Two or more responsible bidders were willing and able to compete effectively for the business.		
Clear, Accurate, and Complete Specification A complete, adequate, and realistic specification or purchase description was available and included any specifications and pertinent attachments that define the items or services sought in order for the bidder to properly respond.		
Firm Fixed Price A firm fixed price contract was appropriate for this procurement		

Cost or Price Analysis Either a cost analysis, with associated profit negotiation, or a price analysis was performed and documented in the procurement file with respect to the initial contract award. Also cost analysis was performed when negotiating contract modifications unless price reasonableness was established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.		
Selection on Price The selection of the successful bidder could be made principally on the basis of price.		
Written Record of Procurement History The file contains records detailing the history of this procurement. At a minimum, these records include: (1) Rationale for the method of procurement, (2) Selection of contract type, (3) Reasons for contractor selection or rejection, and (4) Basis for the contract price. Check "Not Deficient" if #3 & 4 are recorded.		
Discussions Unnecessary In this procurement, other than a pre-bid conference, discussions with bidders should not be needed between solicitation and award.		
Advertising The Invitation for Bids was publicly advertised.		
Adequate Number of Sources Solicited Bids were solicited from an adequate number of known suppliers.		
Sufficient Bid Time Prospective bidders were provided sufficient time to prepare bids prior to the date set for opening the bids.		
Bid Opening All bids were publicly opened at the time and place prescribed in the invitation for bids.		
Responsiveness A firm fixed price contract was awarded in writing to the lowest responsive bidder.		
Lowest Price The bidding documents specified that factors, such as discounts, transportation costs, and life cycle costs, would be considered in determining which bid was the lowest. These factors were considered by the grantee in determining which bid was the lowest. If these factors were not specified, check NA		
Rejecting Bids A bid (or bids) was rejected for a sound documented business reason. If no bids were rejected, check NA.		
Evaluation of Options The option quantities or periods contained in the contractor's bid or offer were evaluated in order to determine contract award. (To be eligible for Federal funding, options must be evaluated as part of the price evaluation of offers, or must be treated as sole source awards.) If the contract does not contain options, check NA		
Cost or Price Analysis Either a cost analysis, with associated profit negotiation, or a price analysis was performed and documented in the procurement file with respect to the initial contract award. Also cost analysis was performed when negotiating contract modifications unless price reasonableness was established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.		
Written Record of Procurement History The file contains records detailing the history of this procurement. At a minimum, these records include: (1) Rationale for the method of procurement,		

(2) Selection of contract type, (3) Reasons for contractor selection or rejection, and (4) Basis for the contract price.		
Exercise of Options The grantee exercised an option on this contract adhering to the terms and conditions of the option stated in the contract and determined that the option price was better than prices available in the market or that the option was a more advantageous offer at the time the option was exercised. If an option was not exercised under this contract, check NA.		
Out of Scope Changes The grantee amended this contract outside the scope of the original contract. The amendment was treated as a sole source procurement (complying with the FTA requirements for a justification, cost analysis and profit negotiation). If the contract was not modified or if all reviewed modifications were within the scope of the contract, check Not Applicable.		
Advance Payment Provisions The contractor did not receive an advance payment utilizing FTA funds and the contract does not contain advance payment provisions or, if it did, prior written concurrence was obtained from FTA.		
Progress Payment Provisions The contract contains progress payments based on costs incurred (as opposed to percent of completion, except that percent of completion may be used in construction contracts) and the contract contains a provision giving the grantee title to property (materials, work in progress, and finished goods) for which progress payments are made. The contract may contain other security in lieu of obtaining title. If the contract does not contain progress payments, check NA.		
Time and Materials Provisions This is a time and materials contract; the grantee determined that no other type of contract is suitable; and the contract specifies a ceiling price. If this is not a time and materials contract, check NA.		
Liquidated Damages Provisions This contract contains liquidated damages provisions and the assessment for damages is specified in the contract at a specific rate per day for each day of overrun in contract time. If this contract does not contain liquidated damages provisions, check NA		
Clauses This contract contains the appropriate FTA required clauses. The contract clauses located in the Master Agreement should be used to determine the applicability of the clauses to the procurement type. FTA C 4220.1F, Appendix D, and The Best Practices Procurement Manual, Appendix A.1, can be used to determine the applicability of the specific language of a clause that a grantee may use.		

Exhibit 3D: Procurement by Competitive Proposal

Element	Yes	N/A
Independent Cost Estimate The grantee made and documented an independent cost estimate before receipt of proposals.		
Unreasonable Qualification Requirements This solicitation did not contain unreasonable requirements placed on firms in order for them to qualify to do business.		
Arbitrary Action There was no arbitrary action in the procurement process. (An example of arbitrary action is when award is made to other than the contractor who most satisfied all the grantee's requirements as specified in the solicitation and as evaluated by staff.)		
Brand Name Restrictions A "brand name or equal" specification is used and the solicitation has identified the minimum needs and clearly set forth those salient physical and functional characteristics of the brand name required by the grantee. If the solicitation specifies "brand name" only without specifying an equal or listing the physical or functional characteristics needed, check Deficient. If the procurement does not specify a "brand name", check NA.		
Geographic Preferences The solicitation contains no in-State or local geographic preference except where Federal statutes mandate or encourage them.		
Unnecessary Experience and Excessive Bonding. Unnecessary experience and excessive bonding requirements were not included in this solicitation or contract documents.		
Organizational Conflict of Interest (OCI) There is an apparent or potential OCI and the solicitation contains provisions to eliminate or mitigate the conflict (e.g. by inserting a clause that prohibits the contractor from competing for the follow-on contract to the current design or research contract).		
Evaluation Factors in RFP A method is in place for conducting technical evaluations of the proposals received and the solicitation has evaluation factors identified along with their relative importance.		
Written Procurement Selection Procedures The grantee has written selection procedures and the solicitation also identifies all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.		
Solicitation Prequalification Criteria The solicitation required prequalification of persons, firms, or products. The list is current, includes enough qualified sources to ensure maximum full and open competition, and potential bidders are not precluded from qualifying during the solicitation period from issuance of the solicitation to its closing date. If the solicitation does not contain a prequalification requirement, check NA.		
Award to Responsible Contractor The grantee made a determination that it was awarding to a responsible contractor considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.		
Sound and Complete Agreement This contract is a sound and complete agreement. In addition, it includes remedies for breach of contract and provisions covering termination for cause and convenience.		
Two Bidders Two or more responsible bidders were willing and able to compete effectively for the business.		
Clear, Accurate, and Complete Specification A complete, adequate, and realistic specification or purchase description was available and included any specifications and pertinent attachments that define the items or services sought in order for the bidder to properly respond.		
Price and Other Factors For this procurement, award was made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered.		
Cost or Price Analysis Either a cost analysis, with associated profit negotiation, or a price analysis was performed and documented in the procurement file with respect to the initial contract award. Also cost analysis was performed when negotiating contract modifications unless price reasonableness was established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.		

Advertising The Invitation for Bids was publicly advertised.		
Written Record of Procurement History The file contains records detailing the history of this procurement. At a minimum, these records include: (1) Rationale for the method of procurement, (2) Selection of contract type, (3) Reasons for contractor selection or rejection, and (4) Basis for the contract price. Check "Not Deficient" if #3 & 4 are recorded.		
Adequate Number of Sources Solicited Bids were solicited from an adequate number of known suppliers.		
Evaluation of Options The option quantities or periods contained in the contractor's bid or offer were evaluated in order to determine contract award. (To be eligible for Federal funding, options must be evaluated as part of the price evaluation of offers, or must be treated as sole source awards.) If the contract does not contain options, check NA		
Written Record of Procurement History The file contains records detailing the history of this procurement. At a minimum, these records include: (1) Rationale for the method of procurement, (2) Selection of contract type, (3) Reasons for contractor selection or rejection, and (4) Basis for the contract price.		
Exercise of Options The grantee exercised an option on this contract adhering to the terms and conditions of the option stated in the contract and determined that the option price was better than prices available in the market or that the option was a more advantageous offer at the time the option was exercised. If an option was not exercised under this contract, check NA.		
Out of Scope Changes The grantee amended this contract outside the scope of the original contract. The amendment was treated as a sole source procurement (complying with the FTA requirements for a justification, cost analysis and profit negotiation). If the contract was not modified or if all reviewed modifications were within the scope of the contract, check Not Applicable.		
Advance Payment Provisions The contractor did not receive an advance payment utilizing FTA funds and the contract does not contain advance payment provisions or, if it did, prior written concurrence was obtained from FTA.		
Progress Payment Provisions The contract contains progress payments based on costs incurred (as opposed to percent of completion, except that percent of completion may be used in construction contracts) and the contract contains a provision giving the grantee title to property (materials, work in progress, and finished goods) for which progress payments are made. The contract may contain other security in lieu of obtaining title. If the contract does not contain progress payments, check NA.		
Time and Materials Provisions This is a time and materials contract; the grantee determined that no other type of contract is suitable; and the contract specifies a ceiling price. If this is not a time and materials contract, check NA.		
Liquidated Damages Provisions This contract contains liquidated damages provisions and the assessment for damages is specified in the contract at a specific rate per day for each day of overrun in contract time. If this contract does not contain liquidated damages provisions, check NA		
Clauses This contract contains the appropriate FTA required clauses. The contract clauses located in the Master Agreement should be used to determine the applicability of the clauses to the procurement type. FTA C 4220.1F, Appendix D, and The Best Practices Procurement Manual, Appendix A.1, can be used to determine the applicability of the specific language of a clause that a grantee may use.		

Exhibit 3E: Competitive Procurement by Non-Competitive Proposal (Sole Source) Checklist

Element	Yes	N/A
Independent Cost Estimate The grantee made and documented an independent cost estimate before receipt of proposals.		
Unnecessary Experience and Excessive Bonding Unnecessary experience and excessive bonding requirements were not included in this solicitation or contract documents.		
Arbitrary Action There was no arbitrary action in the procurement process. (An example of arbitrary action is when award is made to other than the contractor who most satisfied all the grantee's requirements as specified in the solicitation and as evaluated by staff.)		
Brand Name Restrictions A "brand name or equal" specification is used and the solicitation has identified the minimum needs and clearly set forth those salient physical and functional characteristics of the brand name required by the grantee. If the solicitation specifies "brand name" only without specifying an equal or listing the physical or functional characteristics needed, check Deficient. If the procurement does not specify a "brand name", check NA.		
Geographic Preferences The solicitation contains no in-State or local geographic preference except where Federal statutes mandate or encourage them.		
Contract Term Limitation The contract period of performance for rolling stock and replacement parts does not exceed five (5) years inclusive of options without prior written FTA approval. For all other types of contracts, the procurement file contains evidence that the contract term is based upon sound business judgment.		
Organizational Conflict of Interest (OCI) There is an apparent or potential OCI and the solicitation contains provisions to eliminate or mitigate the conflict (e.g. by inserting a clause that prohibits the contractor from competing for the follow-on contract to the current design or research contract).		
Sole Source if Other Award is Infeasible The contract file contains documentation that award of a contract was infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies: (1) The item was available only from a single source. (2) Public exigency for the requirement did not permit a delay resulting from a competitive solicitation. (3) An emergency for the requirement did not permit a delay resulting from a competitive solicitation. (4) The FTA authorized noncompetitive negotiations. (5) Competition was determined inadequate after solicitation of a number of sources.		
Written Procurement Selection Procedures The grantee has written selection procedures and the solicitation also identifies all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.		
Cost Analysis Required Cost analysis and profit negotiations were performed (initial award and modifications) and documented or price reasonableness was established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.		
Award to Responsible Contractor The grantee made a determination that it was awarding to a responsible contractor considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.		

Sound and Complete Agreement This contract is a sound and complete agreement. In addition, it includes remedies for breach of contract and provisions covering termination for cause and convenience.		
Clear, Accurate, and Complete Specification A complete, adequate, and realistic specification or purchase description was available and included any specifications and pertinent attachments that define the items or services sought in order for the bidder to properly respond.		
Cost Plus Percentage of Cost This is not a cost plus a percentage of cost type contract.		
Written Record of Procurement History The file contains records detailing the history of this procurement. At a minimum, these records include: (1) Rationale for the method of procurement, (2) Selection of contract type, (3) Reasons for contractor selection or rejection, and (4) Basis for the contract price. Check "Not Deficient" if #3 & 4 are recorded.		
Evaluation of Options The option quantities or periods contained in the contractor's bid or offer were evaluated in order to determine contract award. (To be eligible for Federal funding, options must be evaluated as part of the price evaluation of offers, or must be treated as sole source awards.) If the contract does not contain options, check NA		
Written Record of Procurement History The file contains records detailing the history of this procurement. At a minimum, these records include: (1) Rationale for the method of procurement, (2) Selection of contract type, (3) Reasons for contractor selection or rejection, and (4) Basis for the contract price.		
Exercise of Options The grantee exercised an option on this contract adhering to the terms and conditions of the option stated in the contract and determined that the option price was better than prices available in the market or that the option was a more advantageous offer at the time the option was exercised. If an option was not exercised under this contract, check NA.		
Out of Scope Changes The grantee amended this contract outside the scope of the original contract. The amendment was treated as a sole source procurement (complying with the FTA requirements for a justification, cost analysis and profit negotiation). If the contract was not modified or if all reviewed modifications were within the scope of the contract, check Not Applicable.		
Advance Payment Provisions The contractor did not receive an advance payment utilizing FTA funds and the contract does not contain advance payment provisions or, if it did, prior written concurrence was obtained from FTA.		
Progress Payment Provisions The contract contains progress payments based on costs incurred (as opposed to percent of completion, except that percent of completion may be used in construction contracts) and the contract contains a provision giving the grantee title to property (materials, work in progress, and finished goods) for which progress payments are made. The contract may contain other security in lieu of obtaining title. If the contract does not contain progress payments, check NA.		

<p>Time and Materials Provisions This is a time and materials contract; the grantee determined that no other type of contract is suitable; and the contract specifies a ceiling price. If this is not a time and materials contract, check NA.</p>		
<p>Liquidated Damages Provisions This contract contains liquidated damages provisions and the assessment for damages is specified in the contract at a specific rate per day for each day of overrun in contract time. If this contract does not contain liquidated damages provisions, check NA</p>		
<p>Clauses This contract contains the appropriate FTA required clauses. The contract clauses located in the Master Agreement should be used to determine the applicability of the clauses to the procurement type. FTA C 4220.1F, Appendix D, and The Best Practices Procurement Manual, Appendix A.1, can be used to determine the applicability of the specific language of a clause that a grantee may use.</p>		

Exhibit 4: SOLE SOURCE JUSTIFICATION FORM

For FTA funded procurements, procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

Check one:

- ☐ The item is available only from a single source (sole source justification is attached).
- ☐ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).
- ☐ FTA authorizes noncompetitive negotiations (letter of authorization is attached).
- ☐ After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).
- ☐ The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

Comments:

- ☐ Independent Estimate and Cost Analysis are attached.

Signature

Date

Exhibit 5: Federal Contract Clause

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.

FTA Contract Clauses

No Obligation by the Federal Government *(Required for all Contracts)*

The VCTC and the Contractor acknowledge and agree that, notwithstanding any occurrence by the Federal Government in or approval of this solicitation or award of this 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 VCTC, the Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or 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.

Program Fraud and False Or Fraudulent Statements And Related Acts *(Required for all Contracts)*

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. And U.S. Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of this 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 this Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 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.

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.

Access to Records *(Required for all Contracts)*

The Contractor agrees to provide VCTC, the FTA Administrator, the Comptroller General of the United States or of 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 and conducting audits, inspections, examinations, excerpts, and transcriptions.

The Contractor also agrees, pursuant to 49 CFR 633.1.7, to provide the FTA Administrator or his or her authorized representatives, including any Project Management Oversight (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 in 49 U.S.C. 5307, 5309 or 5311. 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.

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 the Contractor agrees to maintain such books, records, account and reports until the VCTC, 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.

Federal Changes *(Required for all Contracts)*

The Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the grant agreements between the Ventura County Transportation Commission (VCTC) and FTA, as they may be amended or promulgated from time to time during the term of this contract. Failure by the Contractor to so comply shall constitute a material breach of this contract. In the event any such changes significantly affect the cost or the schedule to perform the work, the Contractor shall be entitled to submit a claim for an equitable adjustment under the applicable provisions of this contract.

Termination *(Required for all projects over \$10,000)*

Termination for Convenience - The VCTC, 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.

Termination for Default [Breach or Cause] - 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 VCTC 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 VCTC 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 VCTC, 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.

Opportunity to Cure (General Provision) - The VCTC 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 VCTC's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from VCTC setting forth the nature of said breach or default, VCTC 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 VCTC from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

Title VI Of The Civil Rights Act Of 1964 *(Required for all Contracts)*

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), and subcontractors agree as follows:

- A. Compliance with Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- B. Nondiscrimination.** In accordance with Title VI of the Civil Rights act, as amended, 42 U.S.C. 200d section 3 03 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 laws 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.
- C. Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:
 - 1. Race, Color, Creed, National Origin, Sex** – In accordance with title VII of the Civil Rights Act, as amended, 42 U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor (USDOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246 Relating to Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 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 for which this Contract work is being performed. 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 of 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.

2. **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 laws at 49 U.S.C. 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reasons of age. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.
3. **Disabilities** – In accordance with Section 102 of the Americans with Disabilities Act of 1990, 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Immigration and Naturalization Act of 1986** – In connection with the execution of this Contract, the Contractor must comply with all aspects of the federal Immigration and Naturalization Act of 1986.

- D. Solicitations for Subcontractors, Including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor’s obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
- E. Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by City or the Federal Transit Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to City or the Federal Transit Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- F. Sanctions for Noncompliance.** In the event of the Contractor’s noncompliance with nondiscrimination provisions of this contract, City shall impose contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:
1. withholding of payments to the Contractor under the contract until the Contractor complies; and/or
 2. cancellation, termination, or suspension of the contract, in whole or in part.

- G. Subcontracts.** 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.

Disadvantaged Business Enterprises *(Required for all Contracts)*

The Ventura County Transportation Commission (VCTC) has established a DBE Program pursuant to 49 C.F.R. Part 26, which applies to this Agreement. The requirements and procedures of VCTC's DBE Program are hereby incorporated by reference into this Agreement. Failure by any party to this Agreement to carry out VCTC's DBE Program procedures and requirements or applicable requirements of 49 C.F.R. Part 26 shall be considered a material breach of this Agreement, and may be grounds for termination of this Agreement, or such other appropriate administrative remedy. Each party to this Agreement shall ensure that compliance with VCTC's DBE Program shall be included in any and all sub-agreements entered into which arise out of or are related to this Agreement.

CONTRACTOR's failure to make good faith efforts to comply with VCTC's DBE Program shall be considered a material breach of this AGREEMENT and may give rise to certain administrative penalties and proceedings, including, but not limited to, those set forth in 49 C.F.R. Part 26.107.

No later than Thirty (30) working days after receiving payment of retention from City for work satisfactorily performed by any of its subcontractors for services rendered arising out of or related to this Agreement, CONTRACTOR shall make full payment to its subcontractors of all compensation due and owing under the relevant subcontract agreement, unless excused by City for good cause pursuant to provisions of Section 1.1 below.

No later than Thirty (30) days after receiving payment of retention from City for work satisfactorily performed by any of its subcontractors for services rendered arising out of or related to this Agreement, CONTRACTOR shall also make full payment to its subcontractors of all retentions withheld by it pursuant to the relevant subcontract agreement, unless excused by City for good cause pursuant to provisions of Section 5.1 below.

There shall be no substitution of any DBE subcontractors subsequent to award of this Contract without the written approval of the City's DBE Officer.

Incorporation of Federal Transit Administration (FTA) Terms *(Required for all Contracts)*

The Contractor shall take such action with respect to any subcontract or procurement as VCTC or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request VCTC, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Debarment and Suspension *(Required by all projects greater than \$25,000)*

- A.** The Contractor shall include in each subcontract exceeding \$25,000, regardless of tier, a clause requiring each lower tiered subcontractor to provide the certification set

forth in paragraph B of this section. Each subcontract, regardless of tier, shall contain a provision that the subcontractor shall knowingly enter into any lower tier subcontract exceeding \$25,000 with a person who is disbarred, suspended or declared ineligible from obtaining federal assistance funds. If a proposed subcontractor is unable to certify to the statements in the following certification, the Contractor shall promptly notify VCTC and provide all applicable documentation.

B. Each subcontractor with a subcontract exceeding \$25,000 shall certify as follows:

CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The Primary Participant (applicant for an FTA grant or cooperative agreement, or Potential Contractor for a major third party contract), certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency,-
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction,- violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT (APPLICATION FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT), _____

CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

Signature of Contractor's Authorized Official

Date

Typed Name and Title of Contractor's Authorized Official

Buy America *(Required for Construction Projects and Materials and Supplies greater than \$100,000)*

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.

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 CFR Part 661.5.

Date _____
Signature _____
Company Name _____
Title _____

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

Date _____
Signature _____
Company Name _____
Title _____

Breach of Contract *(Required for Contracts Greater than \$100,000)*

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

its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

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

Clean Air *(Required for Projects greater than \$100,000)*

The contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract, including any air pollution control rules, regulations, ordinances and statutes, specified in Section 1 1017 of the California Government Code. All Contractors and suppliers shall be required to submit evidence, if requested, to City that the governing air pollution control criteria will be met.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 under this Contract.

Clean Water *(Only required for projects over \$100,000)*

(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.

Lobbying *(Required for all FTA Contracts over \$100,000)*

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

Lobbying Certification

As required by U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, I certify to the best of my knowledge and belief that for each application for federal assistance exceeding \$100,000: (1) No Federal appropriated funds have been or will be paid, by or on behalf of _____, to any person for influencing or attempting to influence 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 pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and (2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence 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 any application to FTA for Federal assistance, I assure that Standard Form-LLL, "Disclosure Form to Report Lobbying," would be submitted and would include all information required by the form's instructions.

I understand that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. I also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

Signature & Title of Authorized Official

Date

Cargo Preference *(Required for Rolling Stock Purchase, Construction and Materials and Supplies which includes transport by an ocean vessel)*

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.*

Fly America Requirements *(Required for all Contracts)*

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.

Davis-Bacon and Copeland Anti-Kickback Acts *(Required for Construction Projects Greater than \$2,000)*

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

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

shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met: 1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and, 2 The classification is utilized in the area by the construction industry; and 3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and 4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

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

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or

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

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the

applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees* - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (iii) *Equal employment opportunity* - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

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

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

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

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract.

Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Contract Work Hours And Safety Standards Act *(Required for Operations/Management, Rolling Stock Purchases and Construction Projects over \$2,500)*

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.

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.

Withholding For Unpaid Wages And Liquidated Damages. The (write the name of the grantee or recipient) 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.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(Section 102 non-construction contracts should also have the following provision:)

Payrolls and Basic Records. 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 thereof of the types described in section 1(a)(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 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 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.

(This section is applicable to construction contracts only)

The Contractor agrees to comply with section 107 of the Contract Work Hours and safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

Subcontracts – The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

Bonding *(Required for Construction Projects greater than \$100,000)*

The Recipient agrees to comply with the following bonding requirements and restrictions as provided in Federal regulations and guidance, except as FTA determines otherwise in writing: (1) Construction. As provided by Federal regulations and modified by FTA

guidance, for Project activities involving construction, it will provide: (a) Bid guarantee bonds, (b) Contract performance bonds, and (c) Payment bonds, and (2) Activities Not Involving Construction. For Project activities not involving construction: (a) It will not impose excessive bonding, and (b) It will follow FTA guidance Bid Bond Requirements

Seismic Safety *(Required for Professional Services (A&E) and Construction Projects and Materials and Supplies)*

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.

Transit Employees Protective Act *(Required for Operations and Management Projects)*

The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

1. 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.
2. 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.

3. 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.

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.

Charter Service and School Bus Operations *(Required for Operations and/or Management Projects)*

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.

Federal Privacy Act *(Required for all Contracts)*

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:

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.

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.

Drug and Alcohol Testing *(Required for Operations and Management Programs)*

The Recipient agrees to comply, and assures its Third Party Participants will comply with: (a) Federal transit laws, specifically 49 U.S.C. § 5331, as amended by MAP-21, (b) FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. part 655, and (c) Applicable provisions of DOT regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 C.F.R. part 40, and (2) Remedies for Non-Compliance.

Recipient agrees that if FTA determines that a Recipient of funds or a Third Party Participant receiving funds under 49 U.S.C. Chapter 53 is not in compliance with 49 C.F.R. part 655, the Federal Transit Administrator may bar that Recipient or Third Party Participant from receiving all or a portion of the Federal transit assistance it would otherwise receive.

Patent Rights *(Only applies for experimental, developmental or research work)*

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.

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

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.

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

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

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.

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.

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.

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.

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.

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

Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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.

Patent Rights - This following requirement applies to each contract involving experimental, developmental, or research work:

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.

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.

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.

Energy Conservation *(Required for all Contracts)*

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.

Recycled Products *(Required for Operations and Management, Construction and Materials and Supplies Projects greater than \$10,000)*

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.

National Intelligent Transportation Systems Architecture and Standards *(Required for all Contracts)*

The Recipient agrees to: (1) Conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), as amended by MAP-21, unless it obtains an exemption from those requirements, and (2) Except as the Federal Government determines otherwise in writing, follow: (a) FTA Notice, "FTA National ITS Architecture

Policy on Transit Projects," 66 *Fed. Reg.* 1455, January 8, 2001, and (b) Other applicable Federal guidance.

Access Requirements For Persons With Disabilities (ADA) *(required for all contracts)*

The Recipient agrees to comply with the requirements of 49 U.S.C. § 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Recipient also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto. In addition, the Recipient agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- (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;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) 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;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (10) Any implementing requirements FTA may issue.

State and Local Government Laws/Regulations *(Required for all Contracts)*

To the extent required under Federal law, the State, as the Recipient, agrees to provide the following information about FTA funding for State Programs or Projects: a. Types of Information. The State will provide information including: (1) Identification of FTA as the Federal agency providing the Federal funds for the Program or Project, (2) The Catalog of Federal Domestic Assistance Number of the Program from which the Federal funding for the Program or Project is authorized, and (3) The amount of Federal funds FTA has provided for the Program or Project, and b. Documents. The State will provide the

information required under this provision in the following documents: (1) Requests for proposals, (2) Solicitations, (3) Grant or cooperative agreement applications, (4) Forms, (5) Notifications, (6) Press releases, and (7) Other publications.

Bus Testing Certification *(Required for Rolling Stock Purchases)*

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

1. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
2. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
3. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
4. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

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

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

Pre-Award and Post-Delivery Audit Requirements *(Required for Rolling Stock Purchases over \$100,000)*

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

1. Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
2. Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
3. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

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

Certificate of Compliance

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

FEDERAL MOTOR VEHICLE SAFETY STANDARD CERTIFICATION

I, _____, certify on behalf of
_____, that the vehicles to be

Manufactured comply with relevant Federal Motor Vehicle Safety Standards.

BY: _____

TITLE: _____

MANUFACTURER: _____

DATE: _____