



FREDERICKSBURG REGIONAL TRANSIT
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PROCUREMENT POLICES, PRACTICES AND REQUIREMENTS
August 2017

Procurements for FREDericksburg Regional Transit (FRED) are governed by the procurement policies and practices of the City of Fredericksburg (the City), of which FRED is a department. The City, in turn, has adopted the procurement policies and practices of the Commonwealth of Virginia. The intent of these governing policies and practices is to increase public confidence in purchasing by the City, to encourage full and open competition in public purchasing, to administer fairly and equitably purchasing policies among bidders and to obtain high quality goods and services at the lowest possible price.

Since FRED – through the City -- receives FTA operating and capital assistance, Federal procurement requirements also apply to all federally funded operating and capital procurements undertaken in support of FRED’s mass transportation operations. Summarized below are those specific contract terms and/or regulatory or administrative requirements that apply when Federal funds are being used for the procurement. Note that the requirements of the Americans with Disabilities Act, the equal opportunity provisions of the Civil Rights Act of 1964, as amended, and the FTA’s Drug and Alcohol Testing Requirements (49 CFR Parts 655) apply to all procurements (if applicable) even if Federal funds are not used. Where City and Federal procurement requirements conflict, the Federal requirements shall take precedence.

Note: Effective with procurements taking place after October 1, 2015, the Federal threshold for “micro purchases” became \$3,500. Effective with procurements funded by grants issued on or after December 26, 2014, the threshold for “small purchases” subject to simplified procedures became \$150,000.

FRED Procurement Project Management

For all bids and proposals of **\$10,000 or more**, it shall be the policy of FRED to assign a project manager and a procurement reviewer to each procurement project. This procurement team is jointly responsible for assuring that appropriate FRED project checklists (Appendix B) are used to guide the procurement and ensure compliance with local, state and Federal requirements. The project manager is responsible for maintaining records detailing the history of a procurement. For procurements more than \$3,500 (\$2,000 for construction) and less than \$10,000, the staff person making the purchase shall maintain a history.

The procurement history shall include:

- The procurement method and its rationale;
- The contract type and its rationale;
- Contractor selection methodology and selection rationale;
- Contract price/cost and its justification;
- Reasonable written documentation of all aspects of the procurement based on contract size and complexity; and
- In the case of sole source or single source procurements, documentation of the conditions.



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that led to the decision to use other than full and open competition.

All procurement records, documents and related materials for projects financed by the FTA will be available for review by the FTA and U.S. DOT.

Project Manager: a FRED staff person who performs or oversees the performance of the day-to-day actions necessary to successfully complete a given procurement.

Procurement Reviewer: a FRED management team member who acts as a resource for the project manager for a given procurement. He/she will ensure that all necessary procurement documentation is complete (including required checklists) and all required procurement procedures are followed.

FEDERAL-FUNDING RELATED CLAUSES

The following clauses shall be incorporated into each federally funded FRED procurement action, as applicable. Where these clauses may not apply (e.g., when FRED’s total annual procurements are insufficient to trigger DBE requirements), those clauses will be marked as “Not Applicable” in individual contracts.

Applicable Federal clauses are summarized in the following table.

Table 1 – Federal Clauses and Type of Procurement

Ref. No.	CLAUSE	TYPE OF PROCUREMENT				
		Professional Services / A&E	Operations / Management / Sub-recipients	Rolling Stock Purchase	Construction	Materials & Supplies
1	No Federal government obligations to third-parties by use of a disclaimer	All	All	All	All	All
2	Program fraud and false or fraudulent statements and related acts	All	All	All	All	All
3	Access to Records	All	All	All	All	All
4	Federal changes	All	All	All	All	All
5	Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
6	Incorporation of FTA Terms	All	All	All	All	All
7	Energy Conservation	All	All	All	All	All



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Ref. No.	CLAUSE	TYPE OF PROCUREMENT				
		Professional Services / A&E	Operations / Management / Sub-recipients	Rolling Stock Purchase	Construction	Materials & Supplies
8	Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
9	ADA Access	A&E	All	All	All	N/A
10	Prompt Payment	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met
11	Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309 or 5311 funds			
12	Transit Employee Protective Arrangements		Transit operations funded with Section 5307, 5309, 5311 or 5316 funds			
13	Charter Service Operations		All			
14	School Bus Operations		All			
15	Seismic Safety	A&E for new buildings & additions			New buildings & additions	
16	Patent Rights, Rights in Data & Copyright Requirements	Research & development				
17	Davis Bacon Act				All >\$2,000 (including ferry)	
18	Copeland Anti-Kickback Act Section 1 Section 2				All >\$2,000 (including ferry)	



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Ref. No.	CLAUSE	TYPE OF PROCUREMENT				
		Professional Services / A&E	Operations / Management / Sub-recipients	Rolling Stock Purchase	Construction	Materials & Supplies
19	Termination Provisions (not required of states)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
20	DOL Special EEO Clause				>\$10,000	
21	Recycled Products		Contracts for items designated by EPA,		Contracts for items designated by EPA,	Contracts for items designated by EPA,
22	Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
23	Provisions for resolution of disputes, breaches, or other litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
24	Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
25	Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
26	Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
27	Contract Work Hours & Safety Standards Act		>\$100,000	>\$100,000	>\$100,000 (including ferry vessels)	
28	Buy America			>\$100,000	>\$100,000	>\$100,000 (for steel, iron, manufacture d products)
29	Bonding (not required of states)				>\$100,000 (including ferry vessels)	



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Ref. No.	CLAUSE	TYPE OF PROCUREMENT				
		Professional Services / A&E	Operations / Management / Sub-recipients	Rolling Stock Purchase	Construction	Materials & Supplies
30	Cargo Preference			Involving property that may be transported by	Involving property that may be transported	Involving property that may be transported by
31	Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air



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Discussion and References

1. Federal Government Obligations

- a. The City and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the SUBCONTRACTOR who will be subject to its provisions.

2. Fraud

Each third party contractor must acknowledge that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal government reserves the right to impose penalties under the Program Fraud Civil Remedies Act of 1986.

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



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will be subject to the provisions.

3. Access to Records

The following access to records requirements apply to this Contract:

- a. Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b. Where the Purchaser is a State and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
- c. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- d. Where any Purchaser which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- e. The Contractor agrees to permit any of the foregoing parties to reproduce by any means



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whatsoever or to copy excerpts and transcriptions as reasonably needed.

- f. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.36(i)(11).
- g. FTA does not require the inclusion of these requirements in subcontracts.

4. Federal Changes

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Department of Transportation, Federal Transit Administration, Master Agreement (FTA MA (10) dated October, 2003), between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

5. Civil Rights

Each third party contractor must comply with Civil Rights requirements concerning nondiscrimination and equal employment opportunity (29 U.S.C. 623; 42 U.S.C. 2000, 6102, 12112; 12132; 49 U.S.C. 5332; 29 C.F.R. Part 1630; 41 C.F.R. Parts 60 et. Seq.). The following requirements apply to the underlying contract:

- a. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract: (i) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as



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amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

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

- c. 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.

6. FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated March 18, 2013, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any THE CITY request, which would cause THE CITY to be in violation of the FTA terms and conditions.

7. Energy Conservation

Each third party contractor is required to acknowledge the mandatory standards and policies related to every efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et. seq.).

8. Disadvantage Business Enterprise

Each third party contractor must comply with the Department of Transportation Disadvantaged



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Business Enterprise (DBE) regulations (49 C.F.R. Part 26).

The project manager is to include in the procurement documents and the CONTRACTOR agrees to take the following measures, as applicable, to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is ____%. A separate contract goal **[of ____% DBE participation has] [has not]** been established for this procurement.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. **{If a separate contract goal has been established, use the following}**
Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:
 1. The names and addresses of DBE firms that will participate in this contract;
 2. A description of the work each DBE will perform;
 3. The dollar amount of the participation of each DBE firm participating;
 4. Written documentation of the bidder/Offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 6. If the contract goal is not met, evidence of good faith efforts to do so.
[Bidders][Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)). **{If no separate contract goal has been established, use the following}** The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to**



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return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]

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

9. ADA Access

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

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; FTA Master Agreement MA (17), 10-1-2010 41
- (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. ATBCB)/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



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- the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "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," 47C.F.R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

10. Prompt Payment

In accordance with 49 CFR § 26.29, FRED shall include a prompt payment clause in all DOT-assisted contracts, including A&E contracts. The clause requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment from the grantee.

11. Drug and Alcohol Testing

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

- a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§ 702 *et seq.*
- b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable. The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the City, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Part 655 before February 15 and to submit the Management Information System (MIS) reports before February 15 to Senior Planner-Transit Administration, 2580 Sierra Sunrise Terrace, Suite 100, Chico, CA 95928. To certify compliance the CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.



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12. Transit Employee Protection

- a. The Contractor agrees to comply with applicable transit employee protective requirements as follows: (i) 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 a., 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 non-urbanized areas authorized by 49 U.S.C. §5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause. (ii) 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. (iii) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized 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 Non-urbanized 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.
- b. 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.

13. Charter Service Operations

The CONTRACTOR agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which



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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.

14. School Bus Operations

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

15. Seismic Safety

For public works/construction projects, the requirements of 49 CFR Part 41 (specifically Part 41.117: Seismic safety) apply. 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.

16. Patent and Rights

Each third party contractor must comply with appropriate Patent and Rights in Data requirements (37 C.F.R. Part 401 and 49 C.F.R. Part 18).

Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

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



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- (i) 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.
- (ii) 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. (A). Any subject data developed under that contract, whether or not a copyright has been obtained; and (B) Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
- (iii) 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.
- (iv) 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.
- (v) 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. (vi)



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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 identified that data in writing at the time of delivery of the contract work.

(vii) 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.

c. 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.

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

a. 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.

b. 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.

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



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17. Davis-Bacon

For public works/construction projects or activities exceeding \$2,000, the requirements of the Davis-Bacon Act (40 U.S.C. 276a - 276a (7)) and implementing Department of Labor regulations apply.

a. Minimum wages –

(i) All laborers and mechanics employed or working up 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), 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



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(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 therefore 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



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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.

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

c. 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



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5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City 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



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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.

d. 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



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

e. **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.

e. **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.

g. **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.

h. **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.



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Department of Labor, or the employees or their representatives.

- i. **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.

18. Copeland Act

For public works/construction projects in excess of \$2,000, the provision of the Copeland Anti-Kickback Act (40 U.S.C. 276c) and implementing Department of Labor regulations apply. **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.

19. Termination Provisions

Upon written notice, CONTRACTOR agrees that the Federal Government may suspend or terminate all or part of the Federal financial assistance provided herein if CONTRACTOR has violated the terms of the Grant Agreement or Cooperative Agreement, or if the Federal Government determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of the Grant Agreement or Cooperative Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement. Termination of any Federal financial assistance for the Project will not invalidate obligations properly incurred by CONTRACTOR before the termination date, to the extent those obligations cannot be canceled. If, however, the Federal Government determines that CONTRACTOR has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable and appropriate use of the Project real property, facilities, or equipment, or has failed to comply with the terms of the Grant Agreement or Cooperative Agreement, the Federal Government reserves the right to require CONTRACTOR to refund the entire amount of Federal funds provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant. Agreement or Cooperative Agreement

- a. **Termination for Convenience:** The City may terminate this contract, in whole or in part, at any time by written notice to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the City to be paid the CONTRACTOR. If the CONTRACTOR has any property in its possession belonging to the City, the CONTRACTOR will account for the same, and



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dispose of it in the manner the City directs.

- b. Termination for Default: 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 City 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 City 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 beyond the control of the CONTRACTOR, the City, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.
- c. Termination for Cost-Type Contracts: the City may terminate this contract, or any portion of it, by serving a notice of termination on the CONTRACTOR. The notice shall state whether the termination is for convenience of the City or is for the default of the CONTRACTOR. If the termination is for default, the notice shall state the manner in which the CONTRACTOR has failed to perform the requirements of the contract. The CONTRACTOR shall account for any property in its possession paid for from funds received from the City, or property supplied to the CONTRACTOR by the City. If the termination is for default, the City may fix the fee, if the contract provides for a fee, to be paid the CONTRACTOR in proportion to the value, if any, of the work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the City and the parties shall negotiate the termination settlement to be paid the CONTRACTOR.

20. DOL Special EEO

All contractors and subcontractors which hold any Federal or Federally assisted construction contract in excess of \$10,000 must comply with the requirements of CFR Title 41, Subtitle B, Chapter 60, part 60-4.

The part also requires FRED as an administering agency to follow procedures in making any grant, contract, or guarantee involving federally assisted construction which is not exempt from the requirements of Executive Order 11246, as amended. The part requires the notice provided in Appendix A, Special EEO Clause – Notice to Offerors, to be included in, and be part of, all solicitations for offers and bids on all Federal and Federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Director of the Office of Federal Contract Compliance Programs, United States Department of Labor. This notice is in addition to the equal opportunity clause published at 41 CFR 60-1.4(a) which is required to be include in, and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts.



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21. Recycled Products

To the extent applicable, the CONTRACTOR agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

22. Debarment and Suspension

Each third party contractor must certify that they will not enter into contracts with suspended or debarred contractors (Executive Order 12549; 49 CFR part 29). Each grantee is required to ensure to the best of its knowledge and belief that none of its principals, affiliates, third party contractors, and subcontractors is suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. FTA requires grantees to review the Federal System Award Management (SAM) before entering into any third party contract. Under the Federal Acquisition Regulation (FAR), "[n]o purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility."

For all procurements in excess of \$25,000, it shall be the policy of FRED to review the SAM to determine that proposers are not excluded, debarred or suspended from participation in federally funded projects. Registration in SAM is not required to look-up a prospective contractor/vendor. Following the receipt of quotes, bids and proposals, FRED shall request the contractor's DUNS (Dun and Bradstreet identification number) and/or Commercial and Government Entity (CAGE) code for searching SAMS. FRED staff shall make screen prints of SAM inquiries and include these in the project folder as documentation of compliance with the required responsibility determination. If a contractor/vendor is not registered in SAMS, place a note in the procurement file documenting the date, person conducting the inquiry and the outcome.

The CONTRACTOR agrees to comply, and assures the compliance of each third party CONTRACTOR and SUBCONTRACTOR at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government wide Debarment and Suspension (Non-procurement)," within 49 C.F.R. Part 29. Responsible. If the lowest responsive bidder possesses, at the time of contract award, the ability to perform successfully and a willingness to comply with the terms and conditions of a proposed contract, the bidder is considered responsible.¹

Contractor responsibility is to be determined before making a purchased or after receiving bids or proposals and before making a contract award. Factors to consider when making responsibility determinations include whether the contractor/bidder:

- Is able to provide a satisfactory current and past performance record.
- Has demonstrated integrity and ethics in prior commitments.
- Has the administrative and technical capacity to perform.
- Has, or can obtain, sufficient financial resources to perform the contract.



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- Has, or can obtain, the necessary production, construction, and technical equipment and facilities.
- Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- Is not under any state or Federal debarment and suspension.

In Federally assisted transactions or procurements, FRED is required to ensure to the best of its knowledge and belief that none of its principals, affiliates, third party contractors, and subcontractors is suspended, debarred, ineligible, or voluntarily excluded from participation. The Federal Transit Administration (FTA) requires grantees to review the Federal System Award Management (SAM) before entering into any third party contract or purchase using FTA funds. Under the Federal Acquisition Regulation (FAR), "no purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility." A prospective contractor is not required to register on SAM.

For all procurements in excess of \$25,000, it shall be the policy of FRED to review the SAM to determine that proposers are not excluded, debarred or suspended from participation in federally funded projects. If not provided in bid and proposal documents, prior to award, FRED shall request the contractor's Dun and Bradstreet (DUNS) number to facilitate its search on SAM. FRED staff shall make screen prints of SAM inquiries, and/or notes-to-file documenting the inquiry and include these in the project folder as documentation of compliance with the required responsibility determination.

23. Resolution of Disputes

- a. 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 the City. 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 City. 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 City shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.
- b. Performance During Dispute - Unless otherwise directed by the City, CONTRACTOR shall continue performance under this Contract while matters in dispute are being resolved.
- c. 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 therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- d. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the CONTRACTOR arising out of or



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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 Commonwealth of Virginia.

- e. 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 City, 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.

24. Lobbying

The CONTRACTOR agrees to:

- a. Refrain from using Federal assistance funds to support lobbying,
- b. Comply, and assure the compliance of each third party CONTRACTOR at any tier and each SUBCONTRACTOR at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.
- c. Comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.

25. Clean Air Act

For public works/construction projects, each third party contractor must agree to comply with any Federal environmental and resource conservation requirements that apply to the construction activities under the terms of the Contract. The contractor is required to report any violation of standards, orders or regulation issued under the Clean Air Act (42 U.S.C. 7401 et seq.).

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



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26. Water Pollution Control

The Contractor agrees to comply will all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.) resulting from any activity of the contractor in connection with the performance of the contract to FTA and to the appropriate U.S. EPA regional office. The contractor is responsible for the disposal of hazardous materials, in accordance with applicable Federal, State and Local law and guidelines.

- a. 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.
- b. 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.

27. Works Hours and Safety Standards

For public works/construction projects, the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-222) and implementing Department of Labor regulations apply. The CONTRACTOR agrees to comply, and assures the compliance of each third party CONTRACTOR and each SUBCONTRACTOR at any tier of the Project, with the following employee protection requirements for contract employees

- a. **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.
- b. **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 therefore 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.
- c. **Withholding for unpaid wages and liquidated damages** – The CONTRACTOR 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 monies payable on



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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.

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

28. Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds.

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 pre-award and post-delivery Buy America certifications with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification forms are included in Appendix A and requirements for inclusion in bid documents and when forms are to be submitted are defined in the construction, rolling stock, and materials and supplies checklists provide in Appendix B.

29. Bonding

The FTA requirements regarding bonds pertain only to construction contracts and facility improvement contracts. They do not pertain to contracts for equipment, rolling stock, maintenance, or other non-construction services. It is the responsibility of each transit agency to assess the risks involved in any given procurement and carefully balance those risks against the cost and competitive impacts of bonding requirements. Although the Common Grant Rule requires that performance bonds secure the Federal interest in construction projects, there is no Federal regulation, statute, FTA Circular or Order that requires or prohibits performance bonds



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in transit management solicitations and other non-construction contracts. FTA leaves to the good business judgment of our grantees the discretion to determine the appropriate amount of bonding, if any, to incorporate in non-construction contracts.

Surety Bond - A written agreement whereby one party, called the surety, obligates itself to a second party, called the obligee (the owner, grantee), to answer for the default of a third party, called the principal or obligor. Surety bonds used in construction are called contract surety bonds. There are three primary types of contract surety bonds: bid bonds, performance bonds, and payment bonds.

Bid Bond (or Bid Guarantee) – A promise from a surety (or a certified or cashier's check given by a bidder) for a supply or construction contract to guarantee that the bidder, if awarded the contract within the time stipulated, will enter into the contract at the price bid and furnish the prescribed performance and/or payment bond. Default ordinarily will result in liability to the obligee for the difference between the amount of the principal's bid and the bid of the next low bidder who can qualify for the contract. The liability of the surety is limited to the bid bond penalty. Contractors that have a relationship with a surety can normally obtain bid bonds at no cost. Bid bonds are not usually appropriate for negotiated procurements due to the nature of the process.

Performance Bond - A promise from a bonding company ("the surety") to perform (or cause to be performed) those obligations of the contractor ("the principal"), when the contractor fails to perform its obligations, in an amount up to but not exceeding the amount of the bond ("penal sum"). Performance bonds can incorporate payment bond (labor and materials) and maintenance bond liability (see below). A performance bond protects the owner (grantee) from financial loss should the contractor fail to perform the contract in accordance with its terms and conditions. Once a surety bond is issued, it cannot be withdrawn or cancelled. General contractors may also act as the obligee when bonding subcontractors. General contractors may require subcontractor bonds if the subcontractor is a significant part of the job or a specialized contractor that is difficult to replace.

Payment Bond - A promise from a surety that guarantees payment to certain subcontractors, laborers and suppliers for the labor and materials used in the work performed under the contract. Payment bonds are also called labor and material bonds. These bonds protect laborers and suppliers in the event the contractor fails to pay them. The surety's obligation is limited by the amount of the bond.

Maintenance Bond - A maintenance bond normally guarantees against defective workmanship or materials. However, maintenance bonds occasionally may incorporate an obligation guaranteeing "efficient or successful operation" or other obligations of like intent and purpose.

It is important to note that surety bonds are not intended to protect the contractors that post them. These bonds are for the protection of the owner of the construction project and for the protection of laborers, material suppliers and subcontractors. Since mechanic's liens cannot be placed against public property, the payment bond may be the only protection these claimants have if they are not paid for the goods and services they provide to the project. Under normal circumstances, sureties do not charge a separate premium for Payment Bonds.



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30. Cargo Preference

Any procurement involving equipment, materials, or commodities suitable for transport by ocean vessel shall contain the clauses required by 49 CFR Part 381: Cargo preference - U.S. Flag Vessels.

The contractor agrees:

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

31. Fly America.

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



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OTHER REQUIREMENTS

1. Local Preference

State or local geographic preferences, except those expressly permitted or encouraged by Federal statute are prohibited.

2. Energy Conservation

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, 42 U.S.C. §§ 6321 *et seq.*

3. Architectural and Engineering Services

FRED shall publicly announce all requirements for architect-engineer services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services. Upon receiving submissions describing potential contractors' competence and qualifications, FRED will enter into negotiations only with the prospective contractor judged to be the most qualified. If FRED cannot reach an agreement with the most qualified contractor, FRED may choose to enter negotiations with the next most qualified. FRED retains the right to cancel solicitations for architectural and engineering services if it determines that it cannot obtain those services at fair and reasonable prices.

FRED shall use the following selection criteria for contractors offering architectural and engineering services:

- Professional qualifications;
- Specialized experience and technical competence;
- Capacity to accomplish the work in the required time;
- Past performance on contracts relative to cost control, quality of work, and compliance with performance schedules;
- Location in the general geographical area of the project and knowledge of the locality of the project; and
- Acceptability under other appropriate evaluation criteria.

Further details of FTA requirements may be found at to "FAC 2005-55, February 2, 2012, Subpart 36.6, Architectural-Engineering Services".



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4. Rolling Stock.

a. Audits

- i. In the procurement of rolling stock, the requirements of 49 CFR Part 663 concerning Pre-Award and post-Delivery Audits apply. 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.

b. Bus Testing

- i. In the procurement of buses, the requirements of 49 CFR Part 665 concerning Bus Testing apply.
 1. 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:
 - a. 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.
 - b. 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.
 - c. 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.
 - d. If the manufacturer represents that the vehicle is "grandfathered" (has been



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- 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.
2. A bus testing report shall be placed in the procurement project file and be made available publicly upon receipt from the bus manufacturer. Copies of all publicly available reports shall be made available for distribution.
- c. Transit Vehicle Manufacturer Certification (TVM)
 - i. TVM certification from the manufacturer is required prior to award and prior to exercising a contract option.
 - d. In-plant Inspections
 - i. The basis for the in-plant inspection services is found in FTA requirements contained in 49 CFR Part 663.
 - ii. These regulations establish a requirement for conducting "in-plant" bus inspections for all bus orders that are more than 10 buses or modified vans, or 20 or more of the vehicles that are purchased for a FTA recipient / subrecipient in an area with a population of less than 200,000. [49 CFR 633.37]. For orders that exceed these quantities, an agency must send a resident inspector to the manufacturer's production facility during the final assembly period to monitor the final assembly process; and complete a final report describing the construction activities and explaining how the construction and operation of the buses fulfill the contract specifications.
5. Protest Procedures.
- a. FRED follows the contract protest procedures of the City of Fredericksburg, which may be found at "Fredericksburg, Virginia, Code of Ordinances, Part II, Chapter 2 Administration, Article VI Procurement, Division 4 Appeals and Remedies for Bid Protests".
 - b. The text of those procedures are set out below:
 - Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the City Manager no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than 10 days after posting or publication of the notice of such contract. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Code of Virginia, § 2.2-4342, then the time within which the protest must be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The City Manager shall issue a decision in writing



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within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of the written decision pursuant to § 2-436C.

- If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The City Manager shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as provided in this section. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the City Manager may declare the contract void upon a finding been made and performance has begun, the City Manager may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.
- Where the City Manager determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Division 5 of this article, the City Manager may enjoin the award of the contract to a particular bidder.
- Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.

c. FRED will notify the FTA immediately upon receiving any complaints relating to its procurements.

6. Privacy Act

- a. 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:
 - i. 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.
 - ii. The CONTRACTOR also agrees to include these requirements in each



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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.

7. Independent Cost/Price Analysis

- a. Every procurement action greater than \$3,500 must include a determination that the price is fair and reasonable (except for construction projects, for which such determination must be made for projects exceeding \$2,000). Analyses must be performed for purchases, contract awards, contract modifications, change orders, and for contract options, if exercised. The extent of the analysis depends on the value and nature of the contract.
- b. Before issuing a solicitation, FRED shall prepare an independent cost estimate of a reasonable cost/price level for the goods or services to be purchased. FRED's independent cost estimate (ICE) form (Appendix C) is available for the project manager's use in developing an analysis. In preparing the ICE, FRED may use one or more of the following methods as relevant and appropriate: 1) current market pricing or a published price list; 2) past pricing on a FRED contract for similar goods/services; 3) past pricing of another agency for similar goods/services; 4) engineering or technical estimates; 5) independent third party estimates; 6) other methods that yield similarly independent cost estimate results.
- c. The cost/price analysis is to be performed on cost proposals received and must be maintained in the procurement project folder.
- d. Definitions:
 - i. A "price analysis" is an evaluation of the Offeror's price relative to the prices being offered by other vendors and being paid by the general public for the same or similar items. The essential factors that must be present in order to make a "price analysis" are as follows:
 1. The product must be a "commercial product" (i.e., one for which there is a basis of comparison in the commercial marketplace). Price analysis would not be suitable, for example, for research and development items, or for one-of-a-kind items for which there was no basis of comparison.
 2. It is not necessary that competing products be exactly identical to the product being offered, but one must be able to compare the products' capabilities and their respective price differences in light of those varying capabilities. By such comparisons one is able to make value judgments that a particular product's performance capabilities warrant a higher or lower price than a competing product.
 - ii. A "cost analysis" will be required whenever a price analysis cannot be performed. A cost analysis entails the review and evaluation of the separate cost elements and the proposed profit of an Offeror's cost proposal. A cost analysis is



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conducted to perform an opinion on the degree to which the proposed cost, including profit, represents what the performance of the contract “should cost” assuming reasonable economy and efficiency. A cost analysis will be appropriate in the following situations:

1. The product or service being offered is not susceptible to being evaluated against other commercially available items of similar products or services. Examples would include procurement for professional services where no competing price proposals are submitted, as in procurement for architectural-engineering services where only one cost proposal is solicited from the highest ranking firm, or sole-source procurement for other types of services.
 2. When change orders are issued to contracts requiring the contractor to do work whose cost can only be evaluated by examining the various cost elements, such as labor, materials, travel, etc.
- e. Refer also to FAR Subpart 15.4

8. Use of Options

- a. Options may be included in solicitations and exercised when it is in the best interest of the City.
- b. Options when exercised are subject to all requirements of original solicitation and contract documents.
- c. The contractor is required to comply with all audit requirements and submit separate certifications for the exercised option.
- d. The use and exercise of options shall be governed by applicable sections of Federal Acquisition Regulations (FAR) as codified in 48 CFR Chapter 1.
- e. Select sections of the FAR are provide below:

17.202 Use of options.

(a) Subject to the limitations of paragraphs (b) and (c) of this section, for both sealed bidding and contracting by negotiation, the contracting officer may include options in contracts when it is in the Government’s interest. When using sealed bidding, the contracting officer shall make a written determination that there is a reasonable likelihood that the options will be exercised before including the provision at [52.217-5](#), Evaluation of Options, in the solicitation. (See [17.207](#)(f) with regard to the exercise of options.)

(b) Inclusion of an option is normally not in the Government’s interest when, in the judgment of the contracting officer—

(1) The foreseeable requirements involve—

(i) Minimum economic quantities (*i.e.*, quantities large enough to permit the recovery of startup costs and the production of the required supplies at a reasonable



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price); and

(ii) Delivery requirements far enough into the future to permit competitive acquisition, production, and delivery.

(2) An indefinite quantity or requirements contract would be more appropriate than a contract with options. However, this does not preclude the use of an indefinite quantity contract or requirements contract with options.

(c) The contracting officer shall not employ options if—

(1) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable;

(2) Market prices for the supplies or services involved are likely to change substantially; or

(3) The option represents known firm requirements for which funds are available unless—

(i) The basic quantity is a learning or testing quantity; and

(ii) Competition for the option is impracticable once the initial contract is awarded.

(d) In recognition of—

(1) The Government's need in certain service contracts for continuity of operations; and

(2) The potential cost of disrupted support, options may be included in service contracts if there is an anticipated need for a similar service beyond the first contract period.

17.203 Solicitations.

(a) Solicitations shall include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options (see [17.208](#)).

(b) Solicitations containing option provisions shall state the basis of evaluation, either exclusive or inclusive of the option and, when appropriate, shall inform offerors that it is anticipated that the Government may exercise the option at time of award.

(c) Solicitations normally should allow option quantities to be offered without limitation as to price, and there shall be no limitation as to price if the option quantity is to be considered in the evaluation for award (see [17.206](#)).

(d) Solicitations that allow the offer of options at unit prices which differ from the unit prices for the basic requirement shall state that offerors may offer varying prices for options, depending on the quantities actually ordered and the dates when ordered.

(e) If it is anticipated that the Government may exercise an option at the time of award and if the condition specified in paragraph (d) of this section applies, solicitations shall specify the price at which the Government will evaluate the option



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(highest option price offered or option price for specified requirements).

(f) Solicitations may, in unusual circumstances, require that options be offered at prices no higher than those for the initial requirement; e.g., when—

- (1) The option cannot be evaluated under [17.206](#); or;
- (2) Future competition for the option is impracticable.

(g) Solicitations that require the offering of an option at prices no higher than those for the initial requirement shall—

(1) Specify that the Government will accept an offer containing an option price higher than the base price only if the acceptance does not prejudice any other offeror; and

(2) Limit option quantities for additional supplies to not more than 50 percent of the initial quantity of the same contract line item. In unusual circumstances, an authorized person at a level above the contracting officer may approve a greater percentage of quantity.

(h) Include the value of options in determining if the acquisition will exceed the World Trade Organization Government Procurement Agreement or Free Trade Agreement thresholds.

17.207 Exercise of options.

(a) When exercising an option, the contracting officer shall provide written notice to the contractor within the time period specified in the contract.

(b) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

(c) The contracting officer may exercise options only after determining that—

- (1) Funds are available;
- (2) The requirement covered by the option fulfills an existing Government need;
- (3) The exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors (see paragraphs (d) and (e) of this section) considered;

(4) The option was synopsisized in accordance with [Part 5](#) unless exempted by [5.202\(a\)](#) (11) or other appropriate exemptions in [5.202](#);

(5) The contractor is not listed in the System for Award Management Exclusions (see FAR [9.405-1](#));

(6) The contractor's past performance evaluations on other contract actions have been considered; and

(7) The contractor's performance on this contract has been acceptable, e.g., received satisfactory ratings.



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(d) The contracting officer, after considering price and other factors, shall make the determination on the basis of one of the following:

(1) A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option. If it is anticipated that the best price available is the option price or that this is the more advantageous offer, the contracting officer should not use this method of testing the market.

(2) An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer.

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer. The contracting officer shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of contracts for such supplies or services.

(e) The determination of other factors under paragraph (c) (3) of this section—

(1) Should take into account the Government's need for continuity of operations and potential costs of disrupting operations; and

(2) May consider the effect on small business.

(f) Before exercising an option, the contracting officer shall make a written determination for the contract file that exercise is in accordance with the terms of the option, the requirements of this section, and [Part 6](#). To satisfy requirements of [Part 6](#) regarding full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract, *e.g.*—

(1) A specific dollar amount;

(2) An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;

(3) In the case of a cost-type contract, if—

(i) The option contains a fixed or maximum fee; or

(ii) The fixed or maximum fee amount is determinable by applying a formula contained in the basic contract (but see [16.102\(c\)](#));

(4) A specific price that is subject to an economic price adjustment provision; or

(5) A specific price that is subject to change as the result of changes to prevailing labor rates provided by the Secretary of Labor.

(g) The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority.

(h) Finally, when exercising an option, the file must include a cost or price



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comparison that determined that the option price is the more advantageous offer at the time the option is exercised.

9. Advance Payments

There may be a sound business reason for providing advance payments under a number of circumstances; e.g., utility connections and services, rent, insurance premiums, software licenses, transportation and other areas where there are sound business reasons justifying an advance payment and adequate security for payment. FRED will seek FTA concurrence only when such advance payments of payments customarily required in the marketplace exceed \$100,000.

10. Other Than Full and Open Competition

Normally, FRED will provide for full and open competition when soliciting bids or proposals. Under certain circumstances, however, FRED may conduct procurements without providing full and open competition. FRED will use noncompetitive proposals only when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one the following circumstances is present:

- After soliciting several sources and determining that its specifications are not unduly restrictive and changes cannot be made to encourage greater competition, FRED may determine the competition “adequate.” A cost analysis will be performed in lieu of a price analysis when this occurs.
- When FRED requires supplies of services from only one responsible source, and no other supplies or services will satisfy its requirements, FRED may make a sole source award. When FRED requires an existing contractor to make a change to its contract that is beyond the scope of that contract, such change shall be considered a sole source contract.

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

- Unique or innovative concept. 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 only from one source and the past has not been available from another source.
- Patents or restricted Data Rights. Patent or data rights restrictions preclude competition.
- Substantial Duplication Costs. In the case of the follow-on contract for the continued



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development or production of highly specialized equipment and major components, 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.

- Unacceptable Delay. In the case of a follow-on contract for the development or production of highly specialized equipment and major components, when it is likely that award to another contractor would result in unacceptable delays in fulfilling agency needs.
- Upon receiving a single bid or single proposal in response to a solicitation, FRED will review specifications for undue restrictiveness and may survey potential sources that chose not to submit a bid or proposal. Based on that review, FRED will determine whether conditions for adequate competition existed and, if so, proceed with the procurement, or may revise its specifications or take other steps to provide for adequate competition.

FRED will document all aspects of sole source and/or single bid procurements in the procurement history including the conditions that led to a decision to use other than full and open competition.



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11. Micro Purchases

In general, when a procurement is federally funded and the requirements of the FTA and FRED differ, FRED will apply the more stringent requirement. The Federal micro-purchase threshold was raised to \$3,500 in 2015. Micro-purchases are exempt from the requirement to obtain competitive quotes or process a sole source justification.

Below \$3,500 (\$2,000 for construction), FRED shall follow federal micro-purchase guidelines.

The following procedures will apply to Federally funded micro-purchases:

- FRED will seek to distribute micro-purchases equitably among qualified suppliers;
- FRED will not divide or reduce the size of its procurements merely to come within the micro-purchase limit;
- FRED will document its micro-purchases to establish that the price is fair and reasonable and describe the method for making such a determination.

12. Unreasonable requirements, tag-ons and arbitrary actions

Procurement requirements that unnecessarily and/or unreasonably limit or restrict competition are not permitted. Some situations/practices that are considered to be impermissibly restrictive of competition include, but are not limited to:

- Unreasonable business requirements placed on firms in order for them to qualify to bid or make offers;
- Unnecessary experience requirements;
- Excessive bonding requirements;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive awards to any person or firm on retainer contracts;
- Specifying only a "brand name" product without allowing offers of an "equal" product of allowing an "equal" product without listing the salient characteristics that "equal" product must meet; and
- Geographic preferences.

Tag-ons refers to the practice of adding quantities on to the contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others and then treating the add-on portion as though it met the requirement of the original competition. Tag-ons are actually sole source additions that have not been justified and approved by sole source contract awards and will not be used by FRED.



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To maximize competition, FRED will avoid detailed product specifications when possible. The description of technical requirements 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.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used to define the performance or other salient characteristics of a procurement. FRED will identify the salient characteristics of the named brand that must be met by offerors.

Arbitrary requirements/actions not specifically cited in this procurement policy, but which restrict competition, are not permitted.



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APPENDIX A
FEDERAL CERTIFICATES



FREDERICKSBURG REGIONAL TRANSIT
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**BUY AMERICA CERTIFICATION REQUIREMENT FOR PROCUREMENT OF
STEEL, IRON, OR MANUFACTURED PRODUCTS**

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

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

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_____



FREDERICKSBURG REGIONAL TRANSIT
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**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: _____



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Cost/pro

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: _____



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FEDERAL MOTOR VEHICLE SAFETY STANDARD CERTIFICATION

I, _____ , certify on behalf of
_____ that the vehicles to be manufactured comply
with Federal Motor Vehicle Safety Standards as specified in 49 CFR 26.

Date _____

Signature _____

Company Name _____

Title _____



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LOBBYING CERTIFICATION

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

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all SUBCONTRACTORS shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

Signature of CONTRACTOR'S Authorized Official

Name and Title of CONTRACTOR'S Authorized Official
Date _____



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**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS**

Instructions for Certification

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, THE CITY may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to THE CITY if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact THE CITY for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by THE CITY.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, THE CITY may pursue available remedies including suspension and/or debarment.



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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date _____

Signature _____

Company Name _____

Title _____



FREDERICKSBURG REGIONAL TRANSIT
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Certification Disadvantaged Business Enterprise Program/Equal Employment Opportunity

In accordance with Title 49, Code of Federal Regulations, Part 23, California Public agreements Code Section 10115, and other applicable Disadvantaged Business Enterprise (“DBE”) and Equal Employment Opportunity (“EEO”) rules and regulations, the CONTRACTOR declares that it had made a good faith effort to comply with established DBE goals, and that it has made a good faith effort meet established EEO goals, as evidenced below:

1. CONTRACTOR’S overall DBE participation rate: _

2. Names/Locations of DBEs contacted by CONTRACTOR:

3. Names/Locations of DBEs selected by CONTRACTOR:

4. CONTRACTOR’S work force breakdown by race and gender:

TOTAL EMPLOYEES as of _____

JOB CATEGORIES

White Black Asian Native Am. White Black Asian Native Am.

Officials & Mgrs:

Professional:

Technical:

Sales:

Office/Clerical:

Craftsmen:

Laborers:

Service:

EMPLOYEES

Male _____ Female _____

Note: The above DBE/EEO Affidavit is part of CONTRACTOR’S Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this DBE/EEO Affidavit.

SIGNATURE _____

DATE _____

TITLE _____

COMPANY NAME _____



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Certification Regarding Alcohol Misuse and Prohibited Drug Use

1) As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the undersigned certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and prohibited Drug Use in Transit Operations," 49 CFR part 655.

2) The undersigned shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Department of Transportation, Federal Transit Administration, Master Agreement (FTA MA (9)), between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. The undersigned's failure to so comply shall constitute a material breach of contract.

Signature _____

Name _____

Date _____

Company Name _____

Title _____



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Special EEO Clause – Notice to Offerors

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Time-tables	Goals for minority participation for each trade	Goals for female participation in each trade
	Insert goals for each year	Insert goals for each year.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-Federal involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed



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giving the state, county and city, if any).

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45 FR 65977, Oct. 3, 1980]



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Appendix B

FRED Procurement Checklists



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History In Motion

CONSTRUCTION PROJECT CHECKLIST

Project Title:		
Solicitation Number:		
Anticipated Procurement Amount:	\$	
Project Manager:	Name:	Phone:
Procurement Reviewer:	Name:	Phone:

NOTE: This form is to be completed by the Project Manager and reviewed by the Procurement Reviewer. The checklist is to be placed in the procurement file and maintained throughout the procurement process for all purchases exceeding \$2,000.

CONSTRUCTION PROJECT CHECKLIST

Task Initiation or Completion Target	Date Completed	Description of Duties/Task
Start of Planned Procurement		Preliminary Meeting between Project Manager and Procurement Reviewer to: <ul style="list-style-type: none"> • review this checklist • review the City of Fredericksburg “Quick Reference Chart”, and • Ensure an understanding of the solicitation methods (e.g., Piggy Backing, Joint Procurement, bid), requirements, spending authority, and planned timeline. <p><i>Note: Following the preliminary meeting resolve any questions regarding the solicitation to the City Attorney or FRED’s FTA representative.</i></p>
		Project Manager created a Procurement File and placed original in procurement file and provided copy of checklist to Procurement Reviewer.
Prior to Creation of Solicitation Documents		Plans and specifications prepared by A & E Consultant or Project Manager, depending upon scope and nature of project.
		Completed a cost/price analysis (reference 29CFR97.36) analysis; provided copy to the Procurement Reviewer.
		City Manager advised of procurement project, as appropriate.



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CONSTRUCTION PROJECT CHECKLIST

Task Initiation or Completion Target	Date Completed	Description of Duties/Task
		FTA notified of planned procurement, as appropriate.
Prior to Advertisement		Vendor selection team members identified, contacted, and agreed to participate.
Prior to Solicitation		Review solicitation documents with FRED Director and/or Assistant Director.
		City Manager approval received to release the solicitation, as appropriate
At least 5 weeks before bids due		Advertise solicitation, if appropriate: <ul style="list-style-type: none"> • newspapers and professional journals (including one minority publication), • City and FRED websites, and • Virginia procurement clearing house. Note: <i>Document dates of publication and maintain copies of advertisements in project file.</i>
At least 4 weeks before bids due		Pre-bid/proposal/offer meeting, if applicable.
At least 3 weeks before bids due		Determined DBE target for procurement
At least 2 weeks before bids due		Included notification of protest procedures in solicitation document
		Technical Questions received from Vendors
		Technical Questions and Answers posted
Pre-award		Bid Opening held (tabulation and sign in sheet). If RFP or IFB, then only technical proposals are opened and tabulated.



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CONSTRUCTION PROJECT CHECKLIST		
Task Initiation or Completion Target	Date Completed	Description of Duties/Task
		Vendor determined to be responsible. Verified the vendor's eligibility status on the Federal Debarment Excluded Parties List in SAM; the results printed and placed in procurement file. https://www.sam.gov/portal/SAM/?navigationalstate=JBPNS_rO0ABXdcACJqYXZheC5mYWNlcy5wb3J0bGV0YnJpZGdlLlNUQVRFX0IEAAAAAQApdmllDzpkZjQ1NTBiNy05NzNhLTRlODgtOWEzMi04Y2ExZjIjOTQ1MjgAB19fRU9GX18*&portal:componentId=0c0d95d1-a020-4d5d-9f91-4020bd008cb3&interactionstate=JBPNS_rO0ABXc3ABBFanNmQnJpZGdlVmlld0lkAAAAQAWL2pzZi9kYnNpZ2h0U2VhcmNoLmpzcAAHX19FT0ZfXw**&portal:type=action#1#1
		If contractual services/items are mission critical to the Agency's maintenance of effort, the solicitation document shall include the emergency preparedness plan language.
	Required Not Required	Oral Presentations, if applicable
		If less than two responsive bids/proposals/offers received, then FRED staff can negotiate on the best terms and conditions. Project Manager provided justification why re-soliciting bids/proposal/offers would not be in the best interest of the FRED.
		Evaluations completed by Evaluation/Negotiation Team and all Evaluation Material has been place in the procurement file.
		Negotiations completed by Evaluation/Negotiation Team and all Negotiation Material has been place in the procurement file.
		Recommendation of Award (RFP/IFB) approved by FRED Director or designee
		Legal Approval to proceed with contract development received, if appropriate.
		Execute contract or purchase order and notify vendor of authorization to proceed upon full execution.
During contract period of performance	Required Not Required	Standard Form LLL and Quarterly Updates – procurements greater than \$100,000 where contractor engages in lobbying activities
		Include the following in the solicitation document: Davis-Bacon wage rates (rates required for public works > \$2,000) No Federal Government Obligations to Third Parties (by Use of a Disclaimer)



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CONSTRUCTION PROJECT CHECKLIST		
Task Initiation or Completion Target	Date Completed	Description of Duties/Task
		False Statements or Claims Civil and Criminal Fraud Access to Third Party Contract Records Changes to Federal Requirements Civil Rights (Title VI, EEO, ADA). Disadvantaged Business Enterprises (DBEs). Incorporation of FTA Terms Energy Conservation ADA Access Bid Protest Procedures (City Ordinances Division 4, Sec. 2-434, "Protest of award or decision to award." Debarment and Suspensions <i>Check boxes as completed; enter date completed when all documents have been assembled.</i>
	Required Not Required	Liquidated damages established. <i>Note:</i> <i>Cap the Liquidated Damages</i> – The Contractor's maximum risk must be clearly expressed in the contract so that the surety will know how to price the risk. Damages should not be open-ended. Additionally, if damages are expressed "per day," make the daily damages accrue for <i>business days</i> only.

Project Close-out

The signatures below attest to the fulfillment of the above activities, completion of project close-out, and finalization of the procurement file.

Project Manager:

Procurement Reviewer:

_____ Signature	_____ Date	_____ Signature	_____ Date
_____ Printed/Typed Name		_____ Printed/Typed Name	
_____ Title		_____ Title	



FREDERICKSBURG REGIONAL TRANSIT
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MATERIALS AND SUPPLIES CHECKLIST

Project Title:		
Solicitation Number:		
Anticipated Procurement Amount:	\$	
Project Manager:	Name:	Phone:
Procurement Reviewer:	Name:	Phone:

NOTE: This form is to be completed by the Project Manager and reviewed by the Procurement Reviewer. The checklist is to be placed and maintained in the procurement file or with the purchase order for all purchases exceeding \$3,500.

Definitions:

Micro Purchase - as defined by the Federal government, acquisition of services, supplies or other property that cost less than \$3,500.

Small Purchase – as defined by the Federal government, acquisition of services, supplies or other property that cost less than the Federal simplified acquisition threshold, currently fixed at \$150,000.

Small Purchase Procedures - Those relatively simple and informal procurement methods used to make small purchases. If these procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

Discussion:

As a method of procurement, small purchase procedures recognize that, up to some statutory level (\$100,000 for Federal procurements), it could cost more to conduct formal competition than the value expected to be yielded by the formal competition. This procedure requires obtaining only limited competition from an "adequate" number of "qualified" sources (at least two). Solicitations and quotations for small purchases may be either oral or written.

The City of Fredericksburg has established procurement requirements for purchases less than the Federal small purchase threshold; refer to “City of Fredericksburg Purchasing Hoops Quick Reference Chart” [..\13-6 City Procurement Quick Reference.pdf](#)



FREDERICKSBURG REGIONAL TRANSIT
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MATERIALS AND SUPPLIES PROCUREMENT CHECKLIST		
Task Initiation or Completion Target	Date Completed	Description of Duties/Task
Start of Planned Procurement		<p>Preliminary Meeting between Project Manager and Procurement Reviewer to:</p> <ul style="list-style-type: none"> • review this checklist • review the City of Fredericksburg “Quick Reference Chart”, and • Ensure an understanding of the solicitation methods (e.g., Piggy Backing, Joint Procurement, bid), requirements, spending authority, and planned timeline. <p><i>Note: Following the preliminary meeting resolve any questions regarding the solicitation to the City Attorney or FRED’s FTA representative.</i></p>
		Project Manager created a Procurement File and placed original checklist and “Purchasing Hoops Quick Reference Chart” in procurement file; provided a copy of the checklist reference chart to Procurement Reviewer.
		Project Manager completed and provided a cost/price analysis ² (reference 29CFR97.36) analysis to the Procurement Reviewer.
		Determined DBE target, if appropriate.

² Refer to FRED Policy and Procedures, “Cost-price Analysis”.



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MATERIALS AND SUPPLIES PROCUREMENT CHECKLIST		
Task Initiation or Completion Target	Date Completed	Description of Duties/Task
		<p>Include the following clauses in the solicitation document for all procurements :</p> <ul style="list-style-type: none"> No Federal Government Obligations to Third Parties (by Use of a Disclaimer) False Statements or Claims Civil and Criminal Fraud Access to Third Party Contract Records Changes to Federal Requirements Civil Rights (Title VI, EEO, ADA) Disadvantaged Business Enterprises (DBEs) Incorporation of FTA Terms Purchaser's Requirement Certifications Energy Conservation ADA Access Debarment and Suspensions Bid Protest Procedures (City Ordinances Division 4, Sec. 2-434, "Protest of award or decision to award." <p>NOTES:</p> <ol style="list-style-type: none"> 1. Check boxes as completed; enter date completed when all documents have been assembled. 2. For purchases > \$3,500 and < \$150,000, attach the clauses to the purchase order.
If solicitation is > \$10,000		<p>If solicitation is > \$10,000 include the following clause:</p> <ul style="list-style-type: none"> Termination Provisions Special DOL EEO Clause
If solicitation is > \$100,000		<p>Include the following clauses:</p> <ul style="list-style-type: none"> Buy America Provisions for resolution of disputes, breaches, or other litigation Contract Work Hours and Safety Standards Act Lobbying Clean Air Clean Water <p><i>Check boxes as completed; enter date complete when all documents have been assembled.</i></p>



FREDERICKSBURG REGIONAL TRANSIT
History In Motion

MATERIALS AND SUPPLIES PROCUREMENT CHECKLIST		
Task Initiation or Completion Target	Date Completed	Description of Duties/Task
		Review solicitation documents with FRED's Director and/or Assistant Director (as appropriate).
		City Manager approval received to release the solicitation; solicitation approved (as appropriate).
		Advertise solicitation in newspapers (including one minority publication), City and FRED's websites, and Virginia procurement clearing house.
One month before bids due	Required Not Required	Pre-bid meeting, if applicable.
At least 3 weeks before bids due		Technical Questions received from Vendors.
At least 2 weeks before bids due		Technical Questions and Answers posted.
	Required Not Required	Oral Presentations, if applicable.
Prior to negotiation		Bid Opening held (tabulation and sign in sheet) by Purchasing. If RFP or IFB, then only technical proposals are opened and tabulated.
		Verified the vendor's eligibility status on the Federal Debarment Excluded Parties List in SAM; the results will be printed and placed in procurement file.
		If less than two responsive bids/proposals/offers received, then FRED staff can negotiate on the best terms and conditions.
		Evaluations completed by Evaluation/Negotiation Team and all Evaluation Material has been place in the procurement file.
		Negotiations completed by Evaluation/Negotiation Team and all Negotiation Material has been placed in the procurement file.



FREDERICKSBURG REGIONAL TRANSIT
History In Motion

MATERIALS AND SUPPLIES PROCUREMENT CHECKLIST		
Task Initiation or Completion Target	Date Completed	Description of Duties/Task
Project Award		Recommendation of Award approved by FRED Director or designee.
		Execute contract and notify vendor of authorization to proceed upon full contract execution.
Exercising Contract Option		Conduct evaluation of exercising contract option to determine if option price is better than market price or the option is the more advantageous offer at the time it is
		If it is decided to exercise option(s) contained in the solicitation, the execution of the option(s) must include: Copies of all contract clauses included with options
During contract period of performance	Required Not Required	Standard Form LLL and Quarterly Updates – procurements > \$100,000 where supplier engages in lobbying activities

Project Close-out

The signatures below attest to the fulfillment of the above activities, completion of project close-out, and finalization of the procurement file.

Project Manager:

Procurement Reviewer

Signature

Date

Signature

Date

Printed/Typed Name

Printed/Typed Name

Title

Title



FREDERICKSBURG REGIONAL TRANSIT
History In Motion

PROFESSIONAL SERVICES CHECKLIST

Project Title:		
Solicitation Number:		
Anticipated Procurement Amount:	\$	
Procurement Reviewer:	Name:	Phone:
Project Manager:	Name:	Phone:

NOTE: This form is to be completed by the Project Manager and reviewed by the Procurement Reviewer. This checklist is to be placed and maintained in the procurement file throughout the procurement process for all procurements exceeding \$3,500.

Discussion:

Professional services other than architectural and engineering services may be obtained through sealed bids, competitive proposals, or (as the contract value warrants) small purchase or micro-purchase procedures.

Procurement of Architectural and Engineering Services (A&E).

For the procurement of architectural and engineering services, the FTA and most state laws mandate a qualifications-based procurement process. *FRED shall use competitive proposal procedures based on the Brooks Act when contracting for A&E services as defined in 40 U.S.C. Section 541. Other types of services considered A&E services include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping and services which require performance by a registered or licensed architect or engineer. . . . This "qualifications based procurement method" can only be used for the procurement of A&E services. It cannot be used to obtain other types of services even though a firm that provides A&E services is also available to perform other types of services. These requirements apply except to the extent any state adopts or has adopted by statute a formal procedure for the procurement of architectural and engineering services.*

For additional information, consult the Federal Transit Administration's "Best Practices Procurement Manual", Chapter 6, "Procurement Object Types: Special Considerations": www.fta.dot.gov/grants/12831_6037.html



FREDERICKSBURG REGIONAL TRANSIT
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PROFESSIONAL SERVICES PROCUREMENT CHECKLIST		
Task Initiation or Completion Target	Date Completed	Description of Duties/Task
Start of Planned Procurement		<p>Preliminary Meeting between Project Manager and Procurement Reviewer to:</p> <ul style="list-style-type: none"> • Review this checklist; • Review the City of Fredericksburg “Quick Reference Chart”; and • Ensure an understanding of the solicitation methods (Piggy Backing, Joint Procurement, bid), requirements, spending authority, and planned timeline. <p><i>Note: Following the preliminary meeting resolve any questions regarding the solicitation to the City Attorney or FRED’s FTA representative.</i></p>
		Project Manager created a Procurement File and placed original checklist in procurement file and provided copy of checklist to Procurement Reviewer.
Prior to Creation of Scope-of-work		City Manager advised of procurement project (as appropriate).
		FTA notified of planned procurement (as appropriate).
		Vendor selection team members identified, contacted and agreed to participate.
Prior to Advertisement		Project Manager provided a complete scope-of-work.
		Included notification of protest procedures in solicitation.
		If contractual services/items are mission critical to the Agency’s maintenance of effort, the solicitation document shall include the emergency preparedness plan language.



FREDERICKSBURG REGIONAL TRANSIT
History In Motion

PROFESSIONAL SERVICES PROCUREMENT CHECKLIST		
Task Initiation or Completion Target	Date Completed	Description of Duties/Task
		Include the following clauses in the solicitation document: No Federal Government Obligations to Third Parties (by Use of a Disclaimer) False Statements or Claims Civil and Criminal Fraud Access to Third Party Contract Records Changes to Federal Requirements Date: _____ Civil Rights (Title VI, EEO, ADA). Disadvantaged Business Enterprises (DBEs). Incorporation of FTA Terms Energy Conservation ADA Access Debarment and Suspensions Bid Protest Procedures (City Ordinances Division 4, Sec. 2-434, "Protest of award or decision to award." <i>Check boxes as completed; enter date complete when all documents have been assembled.</i>
If solicitation is > \$10,000		If solicitation is > \$10,000 include the following clause: Termination Provisions Special DOL EEO Clause
If solicitation is > \$100,000		If solicitation is > \$100,000 include the following clauses: Provisions for resolution of disputes, breaches, or other litigation Contract Work Hours and Safety Standards Act Lobbying Clean Air Clean Water <i>Check boxes as completed; enter date complete when all documents have been assembled.</i>
		Review solicitation documents with FRED's Director and/or Assistant Director.
		City Manager or designee approval received to release the solicitation; solicitation Approved (as appropriate)
		Advertise solicitation in newspapers (including one minority publication), City and FRED's websites, and Virginia procurement (as appropriate).



FREDERICKSBURG REGIONAL TRANSIT
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PROFESSIONAL SERVICES PROCUREMENT CHECKLIST		
Task Initiation or Completion Target	Date Completed	Description of Duties/Task
One month before bids due		Pre-bid/proposal/offer meeting, if applicable.
At least 3 weeks before bids		Technical Questions received from Offerors.
At least 2 weeks before bids		Technical Questions and Answers posted.
	Required Not Required	Oral Presentations, if applicable
Pre-award		Proposal opening held (tabulation and sign in sheet) (if appropriate). If RFP or IFB, then only technical proposals are opened and tabulated.
		Verified the vendor's eligibility status on the Federal Debarment Excluded Parties List in SAM; the results printed and placed in procurement file. https://www.sam.gov/portal/SAM/?navigationalstate=JBPNS_rO0ABXdcACJqYXZheC5mYWNlcy5wb3J0bGV0YnJpZGdlLlNUQVRFX0IEAAAAAQApdmlldzpkZjQ1NTBiNy05NzNhLTRI0DgtOWEzMi04Y2ExZjliOTQ1MjgAB19fRU9GX18*&portal:componentId=0c0d95d1-a020-4d5d-9f91-4020bd008cb3&interactionstate=JBPNS_rO0ABXc3ABBfanNmQnJpZGdlVmllld0lkAAAAAQAWL2pzZi9kYnNpZ2h0U2VhcmNoLmpzcAAHX19FT0ZfXw**&portal:type=action#1#1
		Project Manager completed and provided a cost analysis (reference 29CFR97.36) analysis to the Procurement Reviewer
		If less than two responsive bids/proposals/offers received, then FRED staff can negotiate on the best terms and conditions. Project Manager provided justification why re-soliciting bids/proposal/offers would not be in the best interest of the FRED.
		Evaluations completed by Evaluation/Negotiation Team and all Evaluation Material has been place in the procurement file
Exercising Contract Option		Conduct evaluation of exercising contract option to determine if option price is better than market price or the option is the more advantageous offer at the time it is exercised. (Written documentation placed in procurement file.)
		If it is decided to exercise option(s) contained in the solicitation, the execution of the option(s) must include: Copies of all contract clauses



FREDERICKSBURG REGIONAL TRANSIT
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PROFESSIONAL SERVICES PROCUREMENT CHECKLIST		
Task Initiation or Completion Target	Date Completed	Description of Duties/Task
		Pre-award Certifications
		Notify apparent successful offeror of elected option(s).
		Negotiations completed by Evaluation/Negotiation Team and all Negotiation Material has been place in the procurement file.
		Recommendation of Award approved by FRED's Director or Assistant Director
Contract Award		Legal Approval to proceed with contract development received.
		Execute contract and notify offeror of authorization to proceed upon full contract execution.
During contract period of performance	Required Not Required	Standard Form LLL and Quarterly Updates (when required) – procurements > \$100,000 where contractor engages in lobbying activities

Project Close-out

The signatures below attest to the fulfillment of the above activities, completion of project close-out, and finalization of the procurement file.

Project Manager:

Procurement Reviewer:

_____ Signature	_____ Date	_____ Signature	_____ Date
_____ Printed/Typed Name		_____ Printed/Typed Name	
_____ Title		_____ Title	



FREDERICKSBURG REGIONAL TRANSIT
History In Motion

ROLLING STOCK PROCUREMENT CHECKLIST

Project Title:		
Solicitation Number:		
Anticipated Procurement Amount:	\$	
Project Manager:	Name:	Phone:
Procurement Reviewer:	Name:	Phone:

NOTE: This form is to be completed by the Project Manager and reviewed by the Procurement Reviewer. The checklist and required clauses are to be placed and maintained in the procurement file throughout the procurement process for all purchases exceeding \$3,500.

DEFINITIONS

Rolling stock is defined in the Buy America regulations (49 CFR Part 661.3) as: "transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services."

ROLLING STOCK PROCUREMENT CHECKLIST

Task Initiation or Completion Target	Date Completed	Description of Duties/Task
Start of Planned Procurement		<p>Preliminary Meeting between Project Manager and Procurement Reviewer to:</p> <ul style="list-style-type: none"> review this checklist review the City's "Purchasing Hoops Quick Reference Chart", and Ensure an understanding of the solicitation methods (e.g., Piggy Backing, Joint Procurement, bid), requirements, spending authority, and planned timeline. <p><i>Note: Following the preliminary meeting resolve any questions regarding the solicitation to the City Attorney or FRED's FTA representative.</i></p>
		Project Manager created a Procurement File and placed original checklist in procurement file and provided copy of checklist to Procurement Reviewer.



FREDERICKSBURG REGIONAL TRANSIT
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ROLLING STOCK PROCUREMENT CHECKLIST		
Task Initiation or Completion Target	Date Completed	Description of Duties/Task
Prior to Creation of scope-of-work and specifications		Project Manager completed and provided a cost/price analysis (reference 29CFR97.36) analysis to the Procurement Reviewer.
		City Manager advised of procurement project (as appropriate).
		FTA notified of planned procurement (as appropriate).
		Vendor selection team members identified, contacted, and agreed to participate.
Prior to Advertisement		Project Manager provided a complete scope-of-work and specifications.
		Included notification of protest procedures in solicitation.
		If contractual services/items are mission critical to the Agency's maintenance of effort, the solicitation document shall include the
		Include the following clauses in the solicitation document: No Federal Government Obligations to Third Parties (by
If solicitation is > \$10,000		If solicitation is > \$10,000 include the following clause: Termination Provisions
If solicitation is > \$100,000		If solicitation is > \$100,000 include the following clauses: Buy America
		Review solicitation documents with FRED's Director and/or Assistant Director.
		City Manager or designee approval received to release the solicitation; solicitation Approved (as appropriate).
		Advertise solicitation in newspapers (including one minority publication), City and FRED's websites, and Virginia procurement
One month before bids due		Pre-bid/proposal/offer meeting, if applicable.
	Required Not	Oral Presentations, if applicable.
At least 3 weeks before bids due		Technical Questions received from Vendors.



FREDERICKSBURG REGIONAL TRANSIT
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ROLLING STOCK PROCUREMENT CHECKLIST		
Task Initiation or Completion Target	Date Completed	Description of Duties/Task
At least 2 weeks before bids due		Technical Questions and Answers posted.
Pre-award		Bid Opening held (tabulation and sign in sheet, if appropriate). If RFP or IFB, then only technical proposals are opened and Vendor determined to be responsible.
		If less than two responsive bids/proposals/offers received, then FRED staff can negotiate on the best terms and conditions.
		Evaluations completed by Evaluation/Negotiation Team and all Evaluation Material has been place in the procurement file.
		The pre-award review is required before FRED may enter into a formal contract with a supplier. The review period begins after the
		Obtained Transit Vehicle Manufacturers (TVM) certifications - Procurement of buses and modified mass produced vans
		Negotiations completed by Evaluation/Negotiation Team and all Negotiation Material has been place in the procurement file.
Project Award		Recommendation of Award (RFP/IFB) approved by the Director or designee.
		Legal Approval to proceed with contract received.
		Execute contract or purchase order and notify vendor of authorization to proceed upon full contract execution.
Exercising Contract Option		Conduct evaluation of exercising contract option to determine if option price is better than market price or the option is the more
		If solicitation includes options, notify apparent successful bidder of elected option(s).
		If it is decided to exercise option(s) contained in the solicitation, the execution of the option(s) must include:
During contract period of		Standard Form LLL and Quarterly Updates (when required) – procurements > \$100,000 where contractor engages in lobbying
Prior to delivery of the first		Vendor Submits Altoona Bus Test documentation



FREDERICKSBURG REGIONAL TRANSIT
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ROLLING STOCK PROCUREMENT CHECKLIST		
Task Initiation or Completion Target	Date Completed	Description of Duties/Task
	Required Not Required	On-Site inspectors report – Rolling stock procurements for more than 10 vehicles for areas > 200,000 in population and more than 20 vehicles for areas < 200,000 in population. Place inspector reports in procurement file if in-plant inspection is required. If in-plant inspection is not required, place a note in file documenting why it is not.
Post-Delivery Review		A post-delivery review must be completed before a bus title is transferred to the recipient, or before a bus is placed into revenue
		Post-Delivery Buy America certification - Rolling stock procurements > \$100,000
		Post-Delivery purchaser's requirement certification – Rolling stock procurements > \$100,000
		Post Delivery Federal Motor Vehicles Safety Standards Certification – Non-rail rolling stock procurements

Project Close-out

The signatures below attest to the fulfillment of the above activities, completion of project close-out, and finalization of the procurement file.

Project Manager:

Procurement Reviewer:

Signature	Date	Signature	Date
Printed/Typed Name		Printed/Typed Name	
Title		Title	



FREDERICKSBURG REGIONAL TRANSIT
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APPENDIX C

Independent Cost Estimate Form



FREDERICKSBURG REGIONAL TRANSIT
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FREDericksburg Regional Transit							
INDEPENDENT COST ESTIMATE (ICE) FORM							
ESTIMATE PREPARED BY:		DATE OF ESTIMATE:					
CONTRACT/PROJECT NAME:		FTA GRANT NUMBER:					
CONTRACT/P.O. NUMBER:							
CONTRACT/P.O. TYPE:							
DESCRIPTION OF GOODS/ SERVICES:							
METHOD OF OBTAINING ESTIMATE:		Current Market Pricing/ Published Price List	Data Source:				
		Past Pricing on FRED Contract	Data Source:				
		Past Pricing on Non-FRED Contract	Data Source:				
		Engineering or technical estimate	Data Source:				
		Independent third party estimate	Data Source:				
		Other (<i>specify</i>)	Data Source:				



FREDERICKSBURG REGIONAL TRANSIT
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COST ESTIMATE DETAILS:		(insert below or attach detailed cost estimate with quantities, unit prices, escalation factors and contingencies)					
Product(s)		Cost per Item					
Service(s)		Show Materials, Labor, Overhead, Profit, etc. to Arrive at Total					
Signature of Preparer			Date				
If in excess of micro-purchase, include signature of reviewer							
Signature of Reviewer			Date				
This form must be filed as part of the procurement history.							



FREDERICKSBURG REGIONAL TRANSIT
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APPENDIX D
COST ANALYSIS AND PRICE REASONABLENESS
DETERMINATION



FREDERICKSBURG REGIONAL TRANSIT
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COST ANALYSIS AND PRICE REASONABLENESS DETERMINATION

Purchase Order No: _____ Item Description _____

I hereby determine the price quoted by (supplier name) _____
for the purchase of this item to be fair and reasonable based on the following analysis:

Check one or more which apply:

_____ Comparison of current quotes received for the same or similar item. (See matrix on the next page.)

_____ Comparison of proposed pricing with pricing from recent purchases of the same or similar item, adjusted by the pertinent Consumer or Producer Price Index or Inflation Rate over the corresponding time period, if appropriate. This includes the same or similar items found on existing State or municipal contracts. (Identify contract pricing sources and attach supporting documentation.)

_____ Comparison of price components against current industry standards, such as labor rates, dollars per pound, dollars per square foot, etc., to justify the price reasonableness of the whole. (Attach the analysis which supports the conclusions drawn.)

_____ Comparison with published catalog prices or price lists, commercially advertised sales prices, or prices obtained through other market research (e.g., Internet-based, trade journals, etc.) for the same or similar item commercially available from competing suppliers. (Complete the matrix on the next page and attach supporting quotes, catalog pages, price lists, advertisements, etc.)

_____ Comparison of proposed pricing with an in-house independent cost estimate for the same or similar item. (Complete the matrix on the next page, attach the signed in-house estimate, and explain factors influencing any differences found.)

_____ The quoted price is from a regulated utility. (Identify the utility in the "Comments" section on the next page.)



FREDERICKSBURG REGIONAL TRANSIT

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_____ Other, such as verifiable sales information for the same or similar items sold to the supplier's other customers. (Discuss in the "Comments" section on the next page and attach supplier's sales information.)

<i>Item</i>	<i>Proposed Pricing</i>	<i>Average Market Price</i>	<i>Competitor A</i>	<i>Competitor B</i>	<i>In-House Estimate</i>	<i>Other</i>

SUMMARY MATRIX

ADDITIONAL COMMENTS: _____

Supporting documents are attached.

Signature

Title

Date