

# EXHIBITS

1. Form WH 118: Planned Public Improvement Summary
2. Form WH 119: Public Improvement Project Cost Analysis
3. Example: Emergency Findings
4. Example: Exemption Findings
5. Contractor Responsibility Determination Form
6. Amendment 1 to Standard Form of Agreement Between Owner and Contractor
7. Federal Transit Administration Required Clauses
8. FEMA Contract Provisions Template
9. Agreement 2 to Standard Form of Agreement Between Owner and Engineer
10. Third Party Contracting Guidance (U.S. Department of Transportation)
11. Procurement Disaster Assistance Team (PDAT) Field Manual



## PLANNED PUBLIC IMPROVEMENT SUMMARY

FISCAL YEAR: \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_  
(Name of State or Local Government Agency)

PAGE \_\_\_\_ OF \_\_\_\_

Project Number, if applicable	Project Name	Project Location	Estimated Total On-site Construction Costs	Work Performed by Contractor or Agency?

ORS 279C.305 requires that not less than 30 days prior to adoption of its budget for the subsequent budget period, or before starting to construct a public improvement, each contracting agency shall prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every public improvement that the contracting agency plans to fund in the budget period, identifying each improvement by name and estimating the total on-site construction costs. The list must also state whether the contracting agency intends to perform the construction through a private contractor. If the contracting agency intends to use the contracting agency's own equipment or personnel to perform construction work on a public improvement, and the estimated value of the construction work that the contracting agency intends to perform with the contracting agency's own equipment or personnel exceeds \$200,000 (or \$125,000 if the public improvement involves the resurfacing of highways, roads or streets at a depth of two or more inches), the contracting agency shall file with the commissioner not later than 180 days before construction begins on the public improvement an analysis that shows that the contracting agency's decision conforms to the state's policy that contracting agencies make every effort to construct public improvements at the least cost to the contracting agency. Public agencies are required to keep and preserve a full, true and accurate account of the costs of performing the work, including all categories of costs described in ORS 279C.305(3)(b). The final account of the costs is a public record.

Use this form (WH-118) to list planned public improvements. Use form WH-119 (Public Improvement Project Cost Analysis) to report the agency's cost analysis.

Mail completed forms to: Prevailing Wage Rate Unit  
Oregon Labor & Industries  
800 N.E. Oregon St., #1045  
Portland, OR 97232-2180

\_\_\_\_\_  
(Name of Agency Official)

\_\_\_\_\_  
(Signature of Agency Official)

WH-118 (Rev. 12/19)



## PUBLIC IMPROVEMENT PROJECT COST ANALYSIS

Contracting Agency: \_\_\_\_\_

Project Name/Number: \_\_\_\_\_

Department: \_\_\_\_\_

Estimated Construction Period: \_\_\_\_\_

ESTIMATED CONTRACTOR COSTS				TOTAL OF ALL CONTRACTOR COSTS
Item Description	Estimated Quantity	Unit Cost	Total Estimated Cost Per Item	
				\$

ESTIMATED CONTRACTING AGENCY COSTS							TOTAL OF ALL PUBLIC AGENCY COSTS
Labor	Equipment	Administration and Overhead	Tools and Materials	Cost of Any Contracts Agency Must Enter	Quality Control Testing	Any Other Necessary and Related Costs	
							\$

The above-named agency has determined that this project can be performed at the least cost by: \_\_\_\_\_ Agency \_\_\_\_\_ Contractor (check one)

ORS 279C.305 requires that not less than 30 days prior to adoption of its budget for the subsequent budget period, or before starting to construct a public improvement, each contracting agency shall prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every public improvement that the contracting agency plans to fund in the budget period, identifying each improvement by name and estimating the total on-site construction costs. The list must also state whether the contracting agency intends to perform the construction through a private contractor. If the contracting agency intends to use the contracting agency's own equipment or personnel to perform construction work on a public improvement, and the estimated value of the construction work that the contracting agency intends to perform with the contracting agency's own equipment or personnel exceeds \$200,000 (or \$125,000 if the public improvement involves the resurfacing of highways, roads or streets at a depth of two or more inches), the contracting agency shall file with the commissioner not later than 180 days before construction begins on the public improvement an analysis that shows that the contracting agency's decision conforms to the state's policy that contracting agencies make every effort to construct public improvements at the least cost to the contracting agency. Public agencies are required to keep and preserve a full, true and accurate account of the costs of performing the work, including all categories of costs described in ORS 279C.305(3)(b). The final account of the costs is a public record. Use Form WH-118 (Planned Public Improvement Summary) to list planned public improvements. Use this form (WH-119) to report the agency's cost analysis.

Mail completed forms to:

Prevailing Wage Rate Unit  
Oregon Labor & Industries  
800 N.E. Oregon St., #1045  
Portland, OR 97232-2180

\_\_\_\_\_  
(Name of Agency Official)

\_\_\_\_\_  
(Signature of Agency Official)

**[REDACTED] Irrigation District**  
**Findings in Support of an Emergency Exemption from**  
**Competitive Bidding for [REDACTED] Dam Temporary Repair**

**1. General**

ORS 279C.320 permits the contracting agency to enter into contracts for emergency work in accordance with ORS 279B.080.

ORS 279B.080 permits the head of a contracting agency, or a person designated under ORS 279A.075, to make or authorize others to make emergency procurements of services in an emergency. The contracting agency shall document the nature of the emergency and describe the method used for the selection of the particular contractor. The contracting agency shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances.

**2. Background**

[REDACTED] Dam, on [REDACTED] River about 11 miles downstream from [REDACTED] Dam, diverts water to serve lands in [REDACTED] Valley. It is an earth embankment dam with a concrete gate structure with a height of 32 feet and a crest length of 515 feet.

Irrigation is accomplished by retaining water behind the dam until the water level raises sufficiently (approximately 5 feet) for the water to flow down two irrigation canals. These irrigation canals provided needed irrigation to approximately 10,000 acres of agricultural land in [REDACTED] Valley. The irrigation season begins on May 1, 2017.

The existing concrete sluiceway/control structure has developed leaks, leading to voids in the subgrade under the sluiceway approach slab. By opinion dated February 23, 2017, the US Bureau of Reclamation has issued an opinion that prevents [REDACTED] from retaining water behind the dam until necessary repairs are made to the sluiceway/control structure. A copy of the opinion is attached. Needed repairs include pressure grouting for subgrade stabilization to mitigate the problem. In addition, stability improvements are needed for the earthen dam adjacent to the sluiceway with the addition of a filter berm. A copy of the concept repair plan is attached. These repairs must be completed prior to May 1, 2017 in order to ensure that [REDACTED] can provide the needed irrigation when the May 1, 2017 irrigation season opens.

**3. Findings - Emergency**

An emergency caused by the need to complete repair prior to the opening of the irrigation season now exists. Until repairs are performed, the 10,000 acres of agricultural land served by the dam cannot be irrigated. Utilizing the usual competitive

bidding procedures will not allow the timely procurement of the necessary repairs that will allow needed irrigation to commence by May 1, 2017. An emergency is hereby declared for purchasing and contract administration purposes due to the short timeframes and the need to restore irrigation capability before the irrigation season opens on May 1, 2017.

#### **4. Findings - Competition**

In order to ensure as much competition as possible in the limited time available, [REDACTED] will use the following process to maximize competition:

- [REDACTED] intends to contact multiple contractors regarding the [REDACTED] diversion dam repairs as required by the BOR and solicit their availability, cost and experience information;
- [REDACTED] will provide plans and specifications from BOR TSC in Denver to ensure that the local contractors are providing cost information for the same scope of work;
- Based on the contractors' availability, cost and experience, [REDACTED] will select the contractor who is deemed best able to timely complete the required emergency in an economical manner. Cost will be a factor but experience and availability to timely complete will be the most important factors due to the emergency nature of the work; and
- [REDACTED] will then negotiate directly with the selected contractor.

**DRAFT FINDINGS FOR AN EXEMPTION FROM COMPETITIVE BIDDING  
CITY OF [REDACTED] OREGON  
[REDACTED] BRIDGE REPLACEMENT**

Oregon Revised Statue (ORS) 279C.300 requires competitive bidding of public works improvement contracts unless specifically excepted or exempted from competitive bidding under Oregon Revised Statue (ORS) 279C.335. The City of [REDACTED] Local Contract Review Board may exempt a contract from competitive bidding under ORS 279C.335 based on two findings:

1. The exemption is unlikely to encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract.
2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City of Milwaukie.

Under City of [REDACTED] Local Contract Review Rule (Rule) 10.110, the City may exempt a particular contract from formal competitive requirements and shall consider:

1. The nature of the project.
2. Estimated cost of the project, if applicable.
3. Narrative Description of the cost saving anticipated and reasons formal competitive would be inappropriate.
4. Alternative contracting practice to be employed.
5. Estimated date by which it would be necessary to let the contract, if applicable.

In exempting the public works improvement from competitive bidding under ORS 279C.335(2)(b), the Local Contract Review Board must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract, all 14 items under ORS 279C.335(2)(b)(A-N).

This document presents information the City of [REDACTED] Local Contract Review Board will consider in its finding to exempt the [REDACTED] Bridge Replacement Project (Project) from competitive bidding and to use a Design-Build (DB) method of delivery.

**I. BACKGROUND / NATURE OF THE PROJECT**

In November and December 2015, weather events caused severe damage to the existing [REDACTED] Bridge. Heavy rain caused damage to the footings of the bridge. The Bridge, under an emergency exemption, was temporarily fixed to allow traffic. The bridge acts as an entrance and exit for the nearby waste treatment plant. The [REDACTED] Riverfront Park, including the local boat ramp, is closed until further notice due to flood damage to the footing of the bridge. The bridge cannot be repaired in a manner that makes economic sense. The bridge at the southern approach suffered major damage in the undermining of the wing walls and approach structures. The bridge that was built in the 1950's had no support other than spread footings, and an ODOT report indicated up to 31 inches of scour putting the footings 31 inches above the streambed. The

Bridge was not designed to seismic standards and the soil is sensitive to seismic events. Bridges typically are designed for a 75 year life. A limited in-water-work-window exists.

The old bridge will be replaced. The construction will need to be coordinated with the main sewage line transporting sewage to the [REDACTED] sewage treatment facility due to its proximate location. The South bank of the river needs to be stabilized. The Project is currently fully permitted and those permits are effective for a 2-year period of which 18 months remains to complete all of the required work. To achieve this deadline will require the project to be fast tracked in order that plans are in place to allow the necessary in-water work to occur during the allowed in-water work window. [REDACTED]

The Project is scheduled for completion in the next 18 months, has an estimated construction cost of \$1,200,000, and generally includes the following work:

1. Build a new [REDACTED] Bridge.
2. Stabilize the South bank.

A design-build contract is one in which a single entity designs and constructs a public improvement. Design-build contracts shall only be used if City staff has the expertise and experience to administer a design-build contract. It is believed that City staff and its consultants have the necessary experience and expertise to successfully utilize this contracting method. The design-build process is used to:

- a. Obtain through a design-build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility.
- b. Integrate value engineering suggestions into the design phase, as the construction contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing contract changes.
- c. Reduce the risk of design flaws, misunderstandings and conflicts inherent in construction contractors building from designs in which they have had no opportunity for input, with the potential of reducing contract claims.
- d. Shorten project time as construction activity (early submittals, mobilization, subcontracting and advance work) commences prior to completion of a "biddable" design, or where a design solution is still required (as in complex projects); or
- e. Obtain innovative design solutions through the collaboration of the contractor and design team, which would not otherwise be possible if the contractor had not yet been selected.

The City plans to select a Design-Builder for the Project through a two-step process; consisting of responses to a Request for Proposals (RFP) followed by interviews of top ranked Proposers. The City plans to advertise the RFP for selection of a DB firm in late 2016 with the Design-Builder being under contract by the end of January 2017. This is a public improvement project and, as such, design-builders must be a licensed Contractor in good standing in the state of Oregon.

## II. SUMMARY OF FINDINGS

With regard to ORS 279C.335, the City of [REDACTED] Local Contract Review Board has considered the following in its decision to exempt the Project from competitive bidding and use the DB method of delivery:

**1. The exemption is unlikely to encourage favoritism in the awarding of the public improvement contract or substantially diminish competition for the public improvement contract.**

Analysis: The City will select the Design-Builder through a competitive process that fosters competition and focuses on qualifications and delivering best value to the City with disregard to favoritism. The City will issue a RFP in a manner that will attract competition from qualified firms through advertisement in the Daily Journal of Commerce and local newspaper, and posting on the City's web site.

The RFP will attract Proposers having the specialized knowledge, capacity, and skills for the Project from within the state and Pacific Northwest. A sufficient number of design-build firms are available to respond to the RFP.

With respect to favoritism, the City will take prescriptive measures to assure an open competition. Strict adherence to pre-defined scoring criteria that are included in the RFP will be followed. Scoring criteria will be based on experience of the design-build firm and project personnel; understanding of the technical and work requirements for the Project; approach for managing and minimizing Project risks; approach to safety; and consideration of professional design and/or construction management support costs or fees. Review of proposals and scoring will be performed by City staff with an outside reviewer sitting on the panel. All reviewers shall follow the pre-defined scoring criteria.

Finding: The process used by the City to select the Design-Builder and the availability of multiple firms to propose makes the exemption unlikely to encourage favoritism in the awarding of the public improvement project or substantially diminish competition for the public improvement contract.

**2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the City of [REDACTED]**

Analysis: The Project includes construction of a new bridge during a narrow in-water work window, under a tight budget, all while working in proximity to the main sewer line into the treatment facility. A reduction in design costs and a reduction in construction costs are likely and the exemption provides other substantial benefits to the City as regards meeting the 18 month schedule and completing necessary work within the narrow in-water work window.

Awarding the Project under the exemption allows the construction team members of the Design-Builder to participate during design to conduct exploratory investigations



required, embed construction work and sequencing into the documents, and develop contingency plans that adequately address risks. The work can be conducted in collaboration with the designer and City staffs to assure the City's interests are addressed. Work by the contractor during design may have similar cost to the additional engineering effort required under competitive bidding. However, the benefits to the City are substantially greater under the DB delivery method the exemption provides. The benefits include reduced changed condition claims, reduced risk of sewage treatment disruption, and lower construction cost contingencies.

The exemption from competitive bidding and use of the DB delivery method allows the City to have the contractor identify logistics and costs for staging and sequencing for the evaluation, and the benefit of real-time construction costing. The DB method promotes better collaboration with the contractor during design that will result in increased public and City staff safety through increased vetting of construction means and methods. This will also reduce the risk of treatment plant disruptions that could result in discharge permit violations that endanger public health, significant fines, and economic losses to the business community if closing a reach of the river to recreation and fishing is required. While the cost of these benefits was not quantified, they are considered to be substantial.

Use of design-build delivery has not only substantially reduced the overall project implementation schedules, which provides cost savings under escalating market conditions, but it also provides cost savings related to overall professional engineering services. Historically, engineering design services for a similar type project as that of the City's ranges from 10 to 11% of the construction cost. In a design-build delivery, final bidding documents and bidding support services are not required, and the levels of design details and specifications are greatly reduced as a result of close coordination between the designer and contractor. As a result, design-build projects have realized engineering design services in the range of 7 to 9% of the construction cost.

Finding: Awarding the project under the exemption provides opportunity for cost savings and provides other substantial benefits to the City. The exemption provides a collaborative work approach under the DB delivery method to be used with the contractor involved in the Project design. This provides opportunity to prepare well-planned work sequences that reduce the risk of treatment plant disruptions. This benefit could result in substantial cost savings associated with economic losses to the business community if a plant disruption due to construction work resulted in closing a reach of the river to recreation and fishing. In addition, the DB delivery method will facilitate meeting the aggressive scheduling constraints created by the permits and the in-water work window.

Additionally, substantial benefits of using the DB delivery method include increased safety of the public and City staff and better ability to control the impact that current market conditions have on construction costs.

### **III. RESPONSE TO ITEMS UNDER ORS 279C.335(2)(b)**

In approving the finding under ORS 279C.335(2)(b), the Local Contracting Review Board must consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract 14 items outlined in ORS 279C.335(2)(b)(A-N). Information considered by the Local Contract Review Board related to each of these requirements follows:

(A) How many persons are available to bid:

Information considered by the Local Contract Review Board: The RFP will attract Design-Builders having the specialized knowledge, capacity, and skills for the Project from within the state, and the Pacific Northwest. A sufficient number of DB firms are available to respond to the RFP.

(B) The construction budget and the projected operating costs for the completed public improvement:

Information considered by the Local Contract Review Board: The estimated construction cost for the project is \$1.2 million.

(C) Public benefits that may result from granting the exemption:

Information considered by the Local Contract Review Board: Benefits to the public will result from the collaborative work approach under the DB delivery method. The project is expected to costs less due to value engineering. It will be safer in that the DB firm will address the best manner in working near the main sewage line, and , since wastewater treatment plays a significant role in protecting public health and aquatic life in the [REDACTED] Creek and the Willamette River, it will protect these resources of the City, thereby maintaining significant public benefits as a source of recreation and fishery.

The collaborative approach to design and construction under the DB delivery method better assures that uninterrupted treatment is provided throughout construction. This better assures that the benefits to the public provided by reliable wastewater treatment are maintained.

(D) Whether value engineering techniques may decrease the cost of the public improvement:

Information considered by the Local Contract Review Board: The DB delivery method builds in innovation, constructability, and real-time cost estimating during development of the design; all of which are core parts of value engineering techniques. In an effort to decrease cost of the Project, value engineering will be conducted at about 30% design development. The review will be led by City staff, outside experts (as needed), and the DB firm participating. The DB team can provide realistic determination of costs and constructability issues that will allow cost-benefit decisions to be made by a team of City staff, design engineer, and contractor working in a partnership to decrease the cost of the project.

(E) The cost and availability of specialized expertise that is necessary for the public improvement

Information considered by the Local Contract Review Board: Construction of the Project requires a specialized designers and contractors that have experience designing and building bridges and understands the importance of minimizing disruptions to the treatment plant process and compliance with all existing permits. Construction firms and subcontractors with this expertise are highly available in the Pacific Northwest.

The cost and availability of specialized expertise necessary for public improvement is not impacted by an exemption from competitive bidding and use of the DB method of delivery. However, procurement of the DB firm based on qualifications, understanding of the project, and approach leads to the City retaining the most qualified firm for the project.

(F) Any likely increases in public safety

Information considered by the Local Contract Review Board: It is important to construct the Project in a manner to ensure safe working conditions for the contractor, neighbors, and public that could be affected by the Project.

The DB procurement method allows historical safety performance and commissioning work on similar projects to be considered as a selection criteria. It also permits the City to work closely with the contractor to ensure that the design and work sequences include appropriate safety measures, that the contractor understands the City's safety concerns, and that the contractor will take appropriate steps to address them. The DB method promotes better collaboration with the Contractor during design to result in increased public and City staff safety through increased vetting of construction means and methods, and reduced risk of discharge permit violations that could endanger public health.

(G) Whether granting the exemption may reduce risks to the contracting agency or the public that are related to the public improvement

Information considered by the Local Contract Review Board: In a traditional design-bid-build approach, the engineer develops the work plan, however, communicating the information to the contractors during the bid phase can be challenging due to the level of detail needed. However, the use of the DB method enables the contractor to fully understand the project during the design phase, develop a work plan with the engineer and City staff, and mitigate risk associated with bridge building when avoiding plant interruption when implementing the improvements. Furthermore, the reduction in project uncertainty with having the contractor involved during design translates into cost savings to the City in the form of reduced contingency.

The partnering relationship provided through DB delivery will provide opportunity for the City to work with the Contractor to ensure safety measures are followed and revised if needed to reduce risks to the public.

(H) Whether granting the exemption will affect project funding sources

Information considered by the Local Contract Review Board: The Project funding source will not be impacted by an exemption from competitive bidding and use of the DB method of delivery.

(I) Whether granting the exemption will better enable the City to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement

Information considered by the Local Contract Review Board: Recently, the bidding market for public works projects has been impacted significantly as a result of increased commercial construction across the country and specifically in the Pacific Northwest. A shortage of skilled craftsmen and laborers and a demand for building materials has equated to a substantial (30% to 40%) rise in construction costs. Even when historical cost data and reliable sources are used, engineering and pre-construction cost estimates for building trades and labor have proven to be inaccurate in a traditional delivery method without real time construction pricing. Using a DB method, benefit-cost decisions can be made using real-time construction costs to keep the Project within budget. Both suppliers and sub-trade work can be procured early to eliminate price uncertainty and lessen the impact of price escalation during the construction period. In addition, under DB an owner is afforded the flexibility of awarding early construction work packages (e.g., site/civil work, foundation work, etc.) prior to design completion of the overall project. Furthermore, DB affords the ability and time to adjust the project budget during design when true pricing is understood such that the Project is designed at or below budget.

The DB method provides flexibility to reduce the impact of market conditions, specifically through schedule acceleration. This savings in time lessens the impact of the price increases occurring in the current market conditions. For these reasons, granting an exemption to competitive bidding will better enable the City to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement.

(J) Whether granting the exemption will better enable the City to address the size and technical complexity of the public improvement

Information considered by the Local Contract Review Board: At least four characteristics of the project lead to its technical complexity and the requirement for a Design-Builder with adequate capacity: 1) building a new bridge across [REDACTED] Creek, 2) working in proximity to the existing main sewage line into the plant 3) the limited 18 months available to complete the work 4) and the limited in-water work window.

The technical complexity of the project requires a Design-Builder that can manage all aspects of work. The DB process will allow the City to acquire a highly qualified contractor with adequate staffing for the site supervision needed as opposed to a minimally staffed contractor secured through award to the lowest responsive, responsible

competitive bidder. As a result, it is more likely that the DB firm can address the technical complexities and schedule limitations of the project more effectively, in part because of its qualifications and in part because it will have the opportunity to propose a project approach with adequate staff.

(K) Whether the public improvement involves new construction or renovates or remodels an existing structure

Information considered by the Local Contract Review Board: The Project involves construction of a new bridge near existing City infrastructure. Using a DB method, the construction contractor is part of the Project team early on, involved in field investigation and design coordination; thereby reducing the risk of discovering unknown conditions and damaging existing infrastructure.

(L) Whether the public improvement will be occupied or unoccupied during construction

Information considered by the Local Contract Review Board: During construction the nearby facilities will be occupied as well as when the Design-Builder. The DB method provides adequate time to plan the work and staging areas for construction to avoid issues with work in the nearby facility.

(M) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions

Information considered by the Local Contract Review Board: Construction will most likely be completed in a single phase. However, the work involves several elements, which will require well-planned work sequences, including for the in-water work. The DB delivery method facilitates selection of these key team members early in the process and allows the contractor an opportunity to develop a work plan that provides the best value to the City.

(N) Whether the City has, or has retained under contract, and will use city personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the City will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract

Information considered by the Local Contract Review Board: The City has experience using design-build delivery, will use specialized advisor services when necessary and the law firm of Jordan Ramis for legal counsel support for the Project.

Possible areas where specialized advisors with specific expertise may be hired or utilized include for exempting the Project from competitive bidding, for preparing the RFP for securing the DB firm through a competitive process, for overseeing the work of the DB firm during initial design and guaranteed maximum price development, and for providing

assistance during negotiation of the terms, conditions, scope, and pricing for final design, permitting, and construction.

In addition, Jordan Ramis, PC's attorneys act as general and special counsel for local governments (counties, cities, and special purpose districts) throughout Oregon. They provide advice on public contracting, design and construction litigation, property issues (including negotiation, acquisition, and condemnation), insurance coverage and defense, public meetings, public records, finance, system development charges, utility ratemaking, telecommunications, environmental and natural resources, energy, government ethics for public officials, franchise fees and privilege taxes, and other matters associated with conducting government affairs. They have provided legal counsel to municipal clients on a number alternative delivery projects including the use of design-build and CM/GC.

## **II. SUMMARY OF DESIGN-BUILD BENEFITS TO THE CITY**

The City is seeking to utilize the DB delivery model to realize cost savings and other project delivery benefits as stated within this findings document. These savings and benefits are expected to be significant. The use of DB will promulgate the following benefits for the City:

- Will allow the City a simple and inexpensive procurement process that can be completed in a relatively short timeframe, thus allowing the City to expedite contracting with both a designer and contractor to immediately begin project implementation.
- Will allow schedule acceleration while leveraging the collaboration advantages (e.g., early contractor involvement, value engineering and value construction) provided by DB, thereby reducing project costs.
- Will allow the City to more effectively manage the Project through one contract administration with the Design-Builder.
- Will allow the City to allocate errors, omissions, and performance risks to one entity (i.e., the Design-Builder) rather than incurring risk responsibility through traditional design-bid-build.
- Will allow the City to remain directly involved in both the design and construction processes for enhanced coordination.
- Will allow the City more effective input into scope, features, and operational aspects of the design.
- Will allow the City flexibility to complete the Project at or below the City's budget (i.e., design and construct to-budget).
- Will allow the City to utilize both negotiated and competitive selection of key suppliers and subcontractors through "open book" GMP to deliver best-value for the City (both in terms of Project construction costs and long-term operating costs).

## CONTRACTOR RESPONSIBILITY DETERMINATION FORM

(City staff submits online at <http://www.ccb.state.or.us/responsiblebidders/>)

Project Name: \_\_\_\_\_

Bid Number: \_\_\_\_\_

Business Entity Name: \_\_\_\_\_

CCB License Number: \_\_\_\_\_

Form Submitted By (Contracting Agency): \_\_\_\_\_

Form Submitted By (Contracting Agency Representative's Name): \_\_\_\_\_

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

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

(The contracting agency must submit this form with attachments, if any, to the Construction Contractors Board within 30 days after the date of contract award.)

The contracting agency has (check all of the following):

- ☐ Checked the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.
- ☐ Determined whether the bidder has met the standards of responsibility. In so doing, the contracting agency has considered whether the bidder:
  - ☐ Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.
  - ☐ Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the contract.
  - ☐ Is covered by liability insurance and other insurance in amounts required in the solicitation documents.
  - ☐ Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
  - ☐ Has disclosed the bidder's first-tier subcontractors in accordance with TMC 2.24.220 and ORS 279C.370.
  - ☐ Has a satisfactory record of performance.
  - ☐ Has a satisfactory record of integrity.
  - ☐ Is qualified legally to contract with the contracting agency.
  - ☐ If applicable, possesses a certificate that the Oregon Department of Administrative Services issued under Section 2 of this 2015 Act. (Wage Law Certificate)
  - ☐ Has supplied all necessary information in connection with the inquiry concerning responsibility.
- ☐ Determined the bidder to be (check one of the following):
  - ☐ Responsible under ORS 279C.375(3)(a) and (b).
  - ☐ Not responsible under ORS 279C.375(3)(a) and (b).

(Attach documentation if the contracting agency finds the bidder not to be responsible.)

Submit this form, with any attachments, to the Construction Contractors Board within 30 days after the date the contracting agency awards the contract.

Guidance on conducting performance and integrity review:

City reserves the right, pursuant to ORS 279C.375(3) to investigate and evaluate, at any time prior to award and execution of the Contract, the apparent successful Offeror's responsibility to perform the Contract. Submission of a signed Offer shall constitute approval for City to obtain any information City deems necessary to conduct the evaluation. City shall notify the apparent successful Offeror, in writing, of any other documentation required, which may include, but is not limited to, recent profit-and-loss history; current balance statements; assets-to-liabilities ratio, including number and amount of secured versus unsecured creditor claims; availability of short and long-term financing; bonding capacity; credit information; material; equipment; facility and personnel information; performance record of Contract performance; etc. Failure to promptly provide this information shall result in Offer rejection. City may postpone the award of the Contract after announcement of the apparent successful Offeror in order to complete its investigation and evaluation. Failure of the apparent successful Offeror to demonstrate responsibility, as required under ORS 279C.375(3), shall render the Offeror non-responsible and shall constitute grounds for Offer rejection, as required under ORS 279C.375(3).

The references supplied by Offeror will be checked to determine if they are supportive of the Offeror's ability to meet the requirements of the ITB.

Offeror must provide references that can be contacted regarding the quality of workmanship and service provided to current and past customers.

City reserves the right to choose and investigate any reference whether or not furnished by the Offeror, and to investigate past performance of any Offeror with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, its completion or delivery of service on schedule, and its lawful payment of suppliers, subcontractors, and employees.

City may postpone the award or execution of the Contract after the announcement of the apparent successful Offeror in order to complete its investigation. City may reject a bid if, the opinion of City, overall reference responses indicate inadequate performance.

City will make three attempts to contact the references from the list provided by the Contractor.

Each reference contacted will be asked the same questions, including but not limited to the above factors, including: (1) quality of service; (2) delivery; (3) responsiveness to reported problems, including orders and billing; (4) how well Contractor met the terms of the contract; and (5) whether the reference would choose to hire the Contractor again.



**AMENDMENT #1 TO  
STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

This Amendment #1 supplements the terms of the underlying Agreement to set forth terms required for Oregon Public Contracts. To the extent of any conflict between the requirements of this Amendment #1 and the requirements imposed by the underlying Agreement, this Amendment #1 shall control. The remaining terms of the Agreement remain in full force and effect. The Owner and the Contractor hereby agree:

**1. Mandatory Terms For Oregon Public Improvement Contract.**

(a) Contractor shall:

- (1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the Agreement;
- (2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract;
- (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished;
- (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167;
- (5) Demonstrate that an employee drug testing program is in place;
- (6) To the extent the Work includes demolition, salvage or recycle construction and demolition debris, if feasible and cost-effective;
- (7) To the extent the Work includes lawn and landscape maintenance, compost or mulch yard waste material at an approved site, if feasible and cost-effective;

- (b) If the Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the contractor or a subcontractor in connection with the Agreement as the claim becomes due, Owner may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the Agreement;

- (c) If the Contractor or its subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Agreement within 30 days after receiving payment from Owner, Contractor or its subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived;
- (d) If Contractor or its subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580;
- (e) Paying a claim in the manner authorized (b) through (d) above does not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim;
- (f) No person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases the employee shall be paid at least time and a half pay:
  - (1)
    - (i) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
    - (ii) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
  - (2) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540;
- (g) Contractor shall give notice in writing to employees who work on Work covered by the Agreement, either at the time of hire or before commencement of work on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work;

- (h) Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services;
- (i) Contractor shall comply with ORS 656.017 unless exempt under ORS 656.126;
- (j) The withholding of retainage by Contractor and its subcontractors shall be in accordance with ORS 701.420;
- (k) In accordance with ORS 279C.560, unless Owner finds in writing that accepting a bond, security or other instrument poses an extraordinary risk that is not typically associated with the bond, security or other instrument, Owner will approve the Contractor's written request to deposit bonds, securities or other instruments with the Owner or in a custodial account or other account satisfactory to Owner with an approved bank or trust company, to be held instead of cash retainage for the benefit of Owner. In such event, Owner will reduce the cash retainage by an amount equal to the value of the bonds, securities and other instruments. Interest or earnings on the bonds, securities and other instruments shall accrue to the Contractor. Bonds, securities and other instruments deposited instead of cash retainage shall be assigned to or made payable to Owner and shall be of a kind approved by the Director of the Oregon Department of Administrative Services, including but not limited to: Bills, certificates, notes or bonds of the United States; Other obligations of the United States or agencies of the United States; Obligations of a corporation wholly owned by the federal government; Indebtedness of the Federal National Mortgage Association; General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon; or Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008. The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as Owner may require to protect its interests. When Owner determines that all requirements for the protection of Owner's interest have been fulfilled, the bonds and securities deposited instead of cash retainage will be released to the Contractor. If Owner accepts a surety bond from Contractor in lieu of

retainage, Contractor shall accept like bonds from its subcontractors or suppliers from which Contractor has retainage. Contractor shall then reduce the moneys Contractor holds as retainage in an amount equal to the value of the bond and pay the amount of the reduction to the subcontractor or supplier.

- (l) Owner shall make progress payments on the Agreement monthly as work progresses. Payments shall be based upon estimates of work completed that are approved by Owner. A progress payment is not considered acceptance or approval of any work or waiver of any defects therein. Owner shall pay to Contractor interest on the progress payment, not including retainage, due the contractor. The interest shall commence 30 days after receipt of the invoice from the Contractor or 15 days after the payment is approved by Owner, whichever is the earlier date. The rate of interest charged to Owner on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after receipt of the invoice from Contractor or 15 days after the payment is approved by Owner, whichever is the earlier date, but the rate of interest may not exceed 30 percent. Interest shall be paid automatically when payments become overdue. Owner shall document, calculate and pay any interest due when payment is made on the principal. Interest payments shall accompany payment of net due on the Agreement. Owner will not require Contractor to petition, invoice, bill or wait additional days to receive interest due. When an invoice is filled out incorrectly, when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, Owner shall so notify Contractor within 15 days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by Contractor within seven days of being notified by Owner, may not cause a payment to be made later than specified in this section unless interest is also paid. If requested in writing by a subcontractor, Contractor, within 10 days after receiving the request, shall send to the subcontractor a copy of that portion of any invoice, request for payment submitted to Owner or pay document provided by Owner to Contractor specifically related to any labor or materials supplied by the subcontractor. Payment of interest may be postponed when payment on the principal is delayed because of disagreement between Owner and Contractor.
- (m) Owner will reserve as retainage from all progress payment five percent (5%) of the payment. As work progresses, Owner may (but is not

required) reduce the amount of the retainage and Owner may (but is not required) eliminate retainage on any remaining monthly contract payments after 50 percent of the Work under the Agreement is completed if, in Owner's opinion, such work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by Contractor, and the application shall include written approval of Contractor's surety. However, when the contract work is 97.5 percent completed, Owner may, at the Owner's sole discretion and without application by Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of a written application by Contractor, the Owner shall respond in writing within a reasonable time. The retainage held by Owner shall be included in and paid to Contractor as part of the final payment of the contract price. Owner shall pay to Contractor interest at the rate of 1.5 percent per month on the final payment due Contractor, interest to commence 30 days after the work under the Agreement has been completed and accepted and to run until the date when the final payment is tendered to Contractor. Contractor shall notify Owner in writing when the contractor considers the work complete and Owner shall, within 15 days after receiving the written notice, either accept the work or notify Contractor of work yet to be performed on the Agreement. If Owner does not, within the time allowed, notify Contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

- (n) Contractor shall include in each subcontract for property or services the contractor enters into with a subcontractor, including a material supplier, for the purpose of performing a construction contract:
  - (1) A payment clause that obligates Contractor to pay subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the Owner pays to Contractor under the Agreement;
  - (2) A clause that requires Contractor to provide subcontractor with a standard form that the subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from Contractor;
  - (3) A clause that requires Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative

procedures for processing payments during the entire term of the subcontract. Contractor may change the form or the regular administrative procedures Contractor uses for processing payments if Contractor: (i) Notifies the subcontractor in writing at least 45 days before the date on which the contractor makes the change; and (ii) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

- (4) An interest penalty clause that obligates Contractor, if the Contractor does not pay the subcontractor within 30 days after receiving payment from Owner, to pay subcontractor an interest penalty on amounts due in each payment Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. Contractor or subcontractor is not obligated to pay an interest penalty if the only reason that Contractor or subcontractor did not make payment when payment was due is that Contractor or subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty: (i) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and (ii) Is computed at the rate specified in ORS 279C.515 (2).
- (o) Contractor shall, in each of the Contractor's subcontracts, require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection (n) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.
- (p) Contractor expressly agrees to be bound by and comply with prevailing rate of wage laws applicable to Contractor's Work in accordance with ORS 279C.800 et seq. The prevailing wage rates in effect when this Project was first advertised are hereby expressly incorporated into this Agreement by reference. Information on BOLI Prevailing Wage Rates may be obtained at the following site:  
[www.oregon.gov/BOLI/WHDPWR/pwr\\_state.shtml](http://www.oregon.gov/BOLI/WHDPWR/pwr_state.shtml). A copy of these rates may be requested by calling the Bureau of Labor and Industries directly (Bureau of Labor and Industries – (971) 673-0838). Information on the Federal Davis-Bacon Act rates may be obtained at the following

site: [www.oregon.gov/ODOT/HWY/SPECS/wages.shtml](http://www.oregon.gov/ODOT/HWY/SPECS/wages.shtml). Contractor's workers must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

- (q) Contractor shall have a public works bond filed with the Construction Contractors Board and shall provide Owner with a copy of such bond before starting work unless Contractor is exempt under ORS 279C.836(4), (7), (8) or (9). Contractor shall include a similar provision in any subcontract.
- (r) Contractor shall keep the prevailing rates of wage for Project posted in a conspicuous and accessible place in or about the Project and, if it provides a health and welfare plan or pension plan or both, shall post a notice describing the plan, including information on how and where to make claims and where to obtain further information, in a conspicuous and accessible place in or about the Project.
- (s) Contractor shall furnish to Owner a weekly affidavit with supporting detailed exhibits in a form that complies with the certified statement requirements of ORS 279C.845, certifying wages paid and to whom during each proceeding weekly payroll period, for itself and all subcontractor who are required to submit such certified statements under ORS 279C.845. If Contractor has failed to timely submit a required certified statement, Owner, pursuant to ORS 279C.845(8), shall withhold twenty-five percent (25%) from any amount owed to Contractor until Contractor provides the required certified statement.

**OWNER:**

By: \_\_\_\_\_

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

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

**CONTRACTOR:**

By: \_\_\_\_\_

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

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

## FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES

It is the responsibility of the Bidder to ensure that all clauses applicable to the Work of the Agreement resultant from this Purchase Order are adhered to by the Contractor and its Sub-contractors when applicable.

Sec.	Contract Clause	Applicability to Type of Contract
1	Fly America Requirements	When Transportation Paid By FTA Funds
2	Buy America Requirements	Value > 100K for Construction, Goods, Rolling Stock
3	Charter Bus Requirements	Operational Service
4	School Bus Requirements	Operational Service
5	Cargo Preference Requirements	Equipment/Material/Commodities Transported By Ocean
6	Seismic Safety Requirements	New Construction/Additions
7	Special Department of Labor (DOL) Equal Employment Clause	Value > 10K for Construction
8	Energy Conservation Requirements	All
9	Clean Water Requirements	Value > 100K
10	Bus Testing	Rolling Stock Acquisition
11	Pre-Award and Post Delivery Audit Requirements	Rolling Stock Acquisition
12	Lobbying	All
13	Access to Records and Reports	All
14	Federal Changes	All
15	Bonding Requirements	Construction > 100K
16	Clean Air	Value > 100K
17	Recycled Products	Value > 10K In Fiscal Year
18	Davis-Bacon and Copeland Anti-Kickback Acts	Construction > \$2000
19	Contract Work Hours and Safety Standards Act	Construction > \$2000, Rolling Stock, Operational > \$2,500
20	No Government Obligation to Third Parties	All
21	Program Fraud and False or Fraudulent Statements and Related Acts	All
22	Termination	Value > 10K
23	Government-Wide Debarment and Suspension (Non-procurement)	Value > 25K
24	Privacy Act	All
25	Civil Rights Requirements	All
26	ADA Access Requirements	All
27	Breaches and Dispute Resolution	Value > 100K
28	Patent and Rights in Data	Research Projects Only
29	Transit Employee Protective Agreements	Transit Operations
30	Disadvantaged Business Enterprise (DBE)	All
31	Incorporation of FTA Terms	All
32	Drug and Alcohol Testing	Operational Service/Safety Sensitive
33	Transit Vehicle Manufacturer (TVM) Certifications	Rolling Stock, All Vehicle Procurements
34	Metric Requirements	Sealed Bid Procurements, Rolling Stock, Construction
35	Conformance with National ITS Architecture	Contracts and Solicitations for ITS projects only
36	Corridor Preservation	Right of Way Development
37	Veterans Employment	Capital Projects



## 1. FLY AMERICA REQUIREMENTS

### 49 U.S.C. §40118 41 CFR Part 301-10.131 - 301-10.143

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

**Flow down Requirements:** The Fly America requirements flow down from NCTD to first tier consultants, who are responsible for ensuring that lower tier consultants and sub-consultants are in compliance.

**Fly America** - The Consultant 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 301-10.131 - 301-10.143, which provide that recipients and sub-recipients of Federal funds and their consultants 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 Consultant 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 Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## 2. BUY AMERICA REQUIREMENTS

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

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

**Flow down Requirements:** The Buy America requirements flow down from NCTD to first tier Consultant, who are responsible for ensuring that lower tier consultants and sub-consultants are in compliance.

**Buy America** - The Consultant agrees to comply with 49 U.S.C. 5323(j) as amended by MAP-21, 49 U.S.C. 5323(h), 49 CFR Part 661, and FAST Act (Pub. L. 114-94) 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 CFR 661.7 and was amended by Section 3011 of the FAST Act (Pub. L. 114-94). Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a sixty percent (60%) domestic content for FY16 & FY17; sixty-five percent (65%) domestic content for FY18 & FY19; and seventy percent (70%) domestic content for FY20 & beyond.

General waivers for small purchases do not apply to Consultants equipment purchases when Consultant's contract value exceeds \$150,000 in value. Consultant must submit to NCTD the appropriate Buy America certification with all bids 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 non-responsive. This requirement does not apply to lower tier sub-consultants.

**EXCEPTION SPECIFIC TO THIS PROCUREMENT:** NCTD is seeking Buy America compliant [bids/proposals] with this [RFP/IFB/RFQ]. However, NCTD holds a FTA Non-Availability Waiver that is applicable to this procurement. Accordingly, the inability to certify Buy America compliance on this procurement shall not result in the [bid/proposal] being deemed non-responsive. The requirement for the proposal to include a completed Buy America Certificate, however, is not waived by this exception.

### 3. CHARTER BUS REQUIREMENTS

#### 49 U.S.C. 5323(d) 49 CFR Part 604

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

**Flow down Requirements:** The Charter Bus requirements flow down from NCTD to first tier service Consultants.

**Charter Service Operations** - The consultant agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients 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.

### 4. SCHOOL BUS REQUIREMENTS

#### 49 U.S.C. 5323(F) 49 CFR Part 605

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

**Flow down Requirements:** The School Bus requirements flow down from NCTD to first tier service consultants.

**School Bus Operations** - Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub-recipients 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 sub-recipients may not use federally funded equipment, vehicles, or facilities.

### 5. CARGO PREFERENCE REQUIREMENTS

#### 46 U.S.C. 55305

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

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

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

**Cargoes Procured, Furnished, or Financed by the United States Government** - (a) Definition.- In this section, the term "privately-owned commercial vessel of the United States" does not include a vessel that, after September 21, 1961, was built or rebuilt outside the United States or documented under the laws of a

foreign country, until the vessel has been documented under the laws of the United States for at least three (3) years.

(b) Minimum Tonnage.-When the United States Government procures, contracts for, or otherwise obtains for its own account, or furnishes to or for the account of a foreign country, organization, or persons without provision for reimbursement, any equipment, materials, or commodities, or provides financing in any way with Federal funds for the account of any persons unless otherwise exempted, within or without the United States, or advances funds or credits, or guarantees the convertibility of foreign currencies in connection with the furnishing or obtaining of the equipment, materials, or commodities, the appropriate agencies shall take steps necessary and practicable to ensure that at least fifty percent (50%) of the gross tonnage of the equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels is transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.

(c) Waivers.-The President, the Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by-

(1) Declaring the existence of an emergency justifying a waiver; and

(2) Notifying the appropriate agencies of the waiver.

(d) Programs of Other Agencies.-

(1) Each department or agency that has responsibility for a program under this section shall administer that program with respect to this section under regulations and guidance issued by the Secretary of Transportation. The Secretary, after consulting with the department or agency or organization or person involved, shall have the sole responsibility for determining if a program is subject to the requirements of this section.

(2) The Secretary-

(A) shall conduct an annual review of the administration of programs determined pursuant to paragraph (1) as subject to the requirements of this section;

(B) may direct agencies to require the transportation on United States-flagged vessels of cargo shipments not otherwise subject to this section in equivalent amounts to cargo determined to have been shipped on foreign carriers in violation of this section;

(C) may impose on any person that violates this section, or a regulation prescribed under this section, a civil penalty of not more than \$25,000 for each violation willfully and knowingly committed, with each day of a continuing violation following the date of shipment to be a separate violation; and

(D) may take other measures as appropriate under the Federal Acquisition Regulations issued pursuant to section 25(c)(1) 1 of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1) 2 or contract with respect to each violation.

(e) Security of Government-Impelled Cargo.-

(1) In order to ensure the safety of vessels and crewmembers transporting equipment, materials, or commodities under this section, the Secretary of Transportation shall direct each department or agency (except the Department of Defense), when responsible for the carriage of such equipment, materials, or commodities, to provide armed personnel aboard vessels of the United States carrying such equipment, materials, or commodities if the vessels are transiting high-risk waters.

(2) The Secretary of Transportation shall direct each department or agency responsible to provide armed personnel under paragraph (1) to reimburse, subject to the availability of appropriations, the owners or operators of applicable vessels for the cost of providing armed personnel.

(3) In this subsection, the term "high-risk waters" means waters so designated by the Commandant of the Coast Guard in the Port Security Advisory in effect on the date on which an applicable voyage begins.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1642; Pub. L. 110–417, div. C, title XXXV, §3511(a), (b), Oct. 14, 2008, 122 Stat. 4769; Pub. L. 112–213, title V, §503, Dec. 20, 2012, 126 Stat. 1575.)

## **6. SEISMIC SAFETY REQUIREMENTS**

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

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

**Flow down Requirements:** The Seismic Safety requirements flow down from NCTD to first tier consultants to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all sub-consultants.

**Seismic Safety** - The consultant 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 consultant also agrees to ensure that all work performed under this contract including work performed by a sub-consultant is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. The consultant will facilitate and follow Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. 7704 note, except as the Federal Government determines otherwise in writing.

## **7. SPECIAL DOL EQUAL EMPLOYMENT CLAUSE**

**41 CFR Part 60**

**See Section 25 – Contract Clause Civil Rights Requirements**

## **8. ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.  
49 CFR Part 622**

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

**Flow down Requirements:** The Energy Conservation requirements extend to all third party consultants and their contracts at every tier and, sub-recipients and their sub-agreements at every tier.

**Energy Conservation** - The Consultant 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. The consultant agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.

## **9. CLEAN WATER REQUIREMENTS**

**33 U.S.C. 1251 - 1377**

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

**Flow down Requirements:** The Clean Water Act requirements flow down to NCTD third party consultants and their contracts at every tier, and sub-recipients and their sub-agreements at every tier.

**Clean Water** - (a) The consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. 1251 – 1377 et seq.

(b) The consultant agrees to report each violation to NCTD and understands and agrees that NCTD will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368

(c) The consultant agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f – 300j-6.

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

## 10. BUS TESTING

**49 U.S.C. 5318(e)**

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

**49 CFR Part 665**

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

**Flow down Requirements:** The Bus Testing requirements should not flow down, except to the turnkey consultant as stated in the most current FTA Master Agreement.

**Bus Testing** - The Consultant [Manufacturer] agrees to comply with 49 U.S.C. 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 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.

## 11. PRE-AWARD AND POST-DELIVERY AUDITS REQUIREMENTS

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

**49 C.F.R. 661.12**

**49 CFR Part 663**

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

**Flow down Requirements:** These requirements should not flow down, except to the turnkey consultant as stated in Master Agreement

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

A Buy America certification under this part shall be issued in addition to any certification which may be required by part 661 of this title. Nothing in this part precludes FTA from conducting a Buy America investigation under part 661 of this title "**Pre-Award and Post-Delivery Audit Requirements**" - The Consultant agrees to comply with "Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended," 49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

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

(1) Buy America Requirements: The Consultant shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Firm 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; 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 Consultant shall submit evidence that it will be capable of meeting the bid specifications.

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

## 12. LOBBYING

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

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

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

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

## 13. ACCESS TO RECORDS AND REPORTS

**49 U.S.C. 5325**  
**18 CFR 18.36(i)**  
**49 CFR 633.17**

**Applicability to Contracts:** Reference Chart "Requirements for Access to Records and Reports by Type of Contracts", Item 6 of this Section.

**Flow down Requirements** FTA does not require the inclusion of these requirements in subcontracts.

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

(1) The Consultant agrees to provide NCTD, 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 Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Consultant access to Consultant's

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes <sup>1</sup>	Those imposed on non-state Grantee pass thru to Consultant	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/ Capital Projects	Yes <sup>1</sup>		Yes	Yes	Yes	Yes

records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(2) Where NCTD or a sub-grantee of NCTD 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 Consultant shall make available records related to the contract to NCTD, 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.

(3) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(4) The Consultant agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) 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 Consultant agrees to maintain same until NCTD, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

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

(6) Requirements for Access to Records and Reports by Types of Contract

Sources of Authority: <sup>1</sup> 18 CFR 18.36 (i)

## 14. FEDERAL CHANGES

### 49 CFR Part 18

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

**Flow down Requirements:** The Federal Changes requirement flows down appropriately to each applicable changed requirement.

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

## 15. BONDING REQUIREMENTS

This section applies only to construction or facility improvement contracts exceeding \$100,000.

## 16. CLEAN AIR

**42 U.S.C. 7401 – 7601(q)**

**40 CFR 15.61**

**49 CFR Part 18**

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

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

**Clean Air** - (1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7601(q) *et seq*. The Consultant agrees to report each violation to NCTD and understands and agrees that NCTD, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

## 17. RECYCLED PRODUCTS

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

**40 CFR Part 247**

**Executive Order 12873**

**Applicability to Contracts:** The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Consultant procures \$10,000 or more of one (1) of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

**Flow down Requirements:** These requirements flow down to all consultant and sub-consultant tiers.

**Recovered Materials** - The consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The consultant agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR part 247.

## 18. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

**49 U.S.C. 5333**

**40 U.S.C. 3141 – 3144**

**40 U.S.C. 3146 – 3147**

**18 U.S.C. 874**

**40 U.S.C. 3145**

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

**Flow down Requirements:** Applies to third party consultants and sub-consultants

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without



subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the consultant 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 Monthly) 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 (1) 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 consultant and its sub-consultants 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 consultant and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

(C) In the event the consultant, 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 thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (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 consultant 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 consultant does not make payments to a trustee or other third person, the consultant 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 consultant, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the consultant to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

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

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

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

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

(C) In the event the consultant, 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 thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.

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

(2) **Withholding** - NCTD 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 consultant under this contract or any other Federal contract with the same prime consultant, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime consultant, 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 consultant or any sub-consultant 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, NCTD may, after written notice to the consultant, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the consultant during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall

contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the consultant 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. Consultants 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 consultant shall submit weekly for each week in which any contract work is performed a copy of all payrolls to NCTD 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 consultant is responsible for the submission of copies of payrolls by all sub-consultants.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the consultant or sub-consultant 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 consultant or sub-consultant to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

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

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (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 consultant 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 consultant 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 Consultant's or Sub-consultant'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 consultant will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

(6) **Subcontracts** - The consultant or sub-consultant 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 sub-consultants to include these clauses in any lower tier subcontracts. The prime consultant shall be responsible for the compliance by any sub-consultant or lower tier sub-consultant with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds

for termination of the contract, and for debarment as a consultant and a sub-consultant as provided in 29 CFR 5.12.

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

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

**(10) Certification of eligibility** - (i) By entering into this contract, the consultant certifies that neither it (nor he or she) nor any person or Consultant who has an interest in the consultant's Consultant is a person or Consultant 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 Consultant 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.

**(b) Contract Work Hours and Safety Standards Act.** The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**(1) Overtime requirements.** No consultant or sub-consultant 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 (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the consultant and any sub-consultant responsible therefor shall be liable for the unpaid wages. In addition, such consultant and sub-consultant shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(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 (b)(1) of this section.

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

**(4) Subcontracts.** The consultant or sub-consultant shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the sub-consultants to include these clauses in any lower tier subcontracts. The prime consultant shall be responsible for compliance by any

sub-consultant or lower tier sub-consultant with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the consultant or sub-consultant shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the consultant or sub-consultant for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the consultant or sub-consultant will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

OMB Control Number  
(a)(1)(ii)(B) 1215-0140  
(a)(1)(ii)(C) 1215-0140  
(a)(1)(iv) 1215-0140  
(a)(3)(i) 1215-0140,  
1215-0017  
(a)(3)(ii)(A) 1215-0149  
(c) 1215-0140,  
1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

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

**29 CFR Part 5**  
**40 U.S.C. 3701 et seq.**  
**40 U.S.C. 3702**

**Applicability to Contracts:** The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b) (1) (B) (iii) and (b) (2), 29 CFR 5.2(h), 49 CFR 18.36(i) (6).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work” with a value greater than \$100,000. These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12)

**Flow down Requirements:** Applies to third party consultants and sub-consultants.

(1) **Overtime requirements** - No consultant or sub-consultant 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 (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the consultant and any sub-consultant responsible therefor shall be liable for the unpaid wages. In addition, such consultant and sub-consultant 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 (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

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

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

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

**Applicability to Contracts:** Applicable to all contracts.

**Flow down Requirements:** This concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

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

(1) NCTD and the Consultant 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 NCTD, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Consultant 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 sub-consultant who will be subject to its provisions.

## **21. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

**31 U.S.C. 3801 et seq.**

**49 CFR Part 31**

**18 U.S.C. 1001**

**49 U.S.C. 5307**

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

**Flow down Requirements:** These requirements flow down to consultants and sub-consultants who make, present, or submit covered claims and statements.

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

(1) The Consultant 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 Consultant certifies 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 Consultant 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 Consultant to the extent the Federal Government deems appropriate.

(2) The Consultant 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 Consultant, to the extent the Federal Government deems appropriate.

(3) The Consultant agrees to include the above two (2) 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 sub-consultant who will be subject to the provisions.

## **22. TERMINATION**

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

**See Section 16 of the Purchase Order Terms & Conditions**

## **23. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**

**49 CFR 18  
2 CFR 1200  
2 CFR 180  
Executive Orders 12549 and 12689  
31 U.S.C. 6101**

**Background and Applicability:** In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a consultant, sub-consultant, supplier, Consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180). This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

These provisions apply to all NCTD contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, consultants, and sub-consultants (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System (EPLS), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract.

Grantees, consultants, and sub-consultants who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

**Flow down Requirements:** These requirements flow down to consultants and sub-consultants at all levels.



**Suspension and Debarment:** This contract is a covered transaction for purposes of 49 CFR Part 18. As such, the consultant is required to verify that none of the consultant, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The consultant is required to comply with 2 CFR 1200, and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by NCTD. If it is later determined that the Firm knowingly rendered an erroneous certification, in addition to remedies available to NCTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Firm agrees to comply with the requirements 2 CFR 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The Firm further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **24. PRIVACY ACT**

### **5 U.S.C. 552**

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

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

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

(1) The Consultant 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 Consultant agrees to obtain the express consent of the Federal Government before the Consultant or its employees operate a system of records on behalf of the Federal Government. The Consultant 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.

## **25. CIVIL RIGHTS REQUIREMENTS**

### **29 U.S.C. § 623, 42 U.S.C. § 2000 42 U.S.C. § 6102, 42 U.S.C. § 12112 42 U.S.C. § 12132, 49 U.S.C. § 5332 29 CFR Part 1630, 41 CFR Parts 60 et seq.**

1. The Contractor will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:
  - i. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332, California Civil Code § 51, California Government Code § 11135
  - ii. 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112, California Government Code § 12900 - 12996
  - iii. 49 U.S.C. § 5325 (k).
  - iv. Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.
2. The Civil Rights requirements flow down to all third party sub-contractors and their subcontracts at every tier.
3. The following requirements apply to a contract awarded as a result of this solicitation:

- i. Nondiscrimination - In accordance with U.S. Department of Transportation (DOT), Federal, and State of California regulations 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102, 42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients.", DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order No. 13166 and DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005), the Unruh Civil Rights Act, California Civil Code § 51, and California Government Code § 11135, the Contractor agrees that it will comply with the identified Federal and State of California laws and regulations, pertaining to NCTD programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal and State of California statutes and/or regulations that may be signed into law or promulgated.
- ii. Equal Employment Opportunity - The following equal employment opportunity requirements apply to a contract awarded as a result of this solicitation:
- a) Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender Expression - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 49 U.S.C. § 5332, FTA Circular 4704.1, "Equal Employment Program Guidelines for Grant Recipients", and , the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, including "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Fair Employment and Housing Act, California Government Code Sections 12900 - 12996 and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Bidder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, 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 that DOT or FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.
  - b) Sex – The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1975, as amended, 20 U.S.C. § 1681, and 49 CFR part 25. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
  - c) Age - The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, 45 CFR part 90, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and Equal Employment Opportunity Commission (EEOC) implementing regulations 29 CFR part 1625. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.

- d) Disabilities - The Contractor agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(d), 36 CFR part 1194, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, 49 CFR parts 27, 37, 38, and 39, and FTA Circular 4710.1, "Americans with Disabilities Act: Guidance". In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
4. The Contractor 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.

## **26. ADA ACCESS REQUIREMENTS**

**49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101**

**Applicability to Contracts:** The Consultant shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Consultant shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

## **27. BREACHES AND DISPUTE RESOLUTION**

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

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

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

**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 NCTD. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Consultant mails or otherwise furnishes a written appeal to the NCTD. In connection with any such appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of NCTD shall be binding upon the Consultant and the Consultant shall abide by the decision.

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

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

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

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by NCTD or Consultant 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.

## 28. PATENT AND RIGHTS IN DATA

### 37 CFR Part 401 49 CFR Parts 18 and 19

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

**Flow down Requirements:** The Patent and Rights in Data requirements apply to all consultants and their contracts at every tier.

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

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

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

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

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

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

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

2. Any rights of copyright purchased by NCTD or Consultant using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, NCTD and the Consultant 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 NCTD or Consultant's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, NCTD and the Consultant 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 NCTD or Consultant 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 NCTD nor the Consultant shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

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

(f) Data developed by NCTD or Consultant 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 NCTD or Consultant identifies that data in writing at the time of delivery of the contract work.

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

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Consultant's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), NCTD and the Consultant 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 Consultants under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

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

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

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Consultant's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), NCTD and the Consultant 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 Consultants Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Consultant 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.

## **29. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**

### **49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215**

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

**Flow down Requirements:** These provisions are applicable to all contracts and subcontracts at every tier.

(a) **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Consultant 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 NCTD's project from which Federal assistance is provided to support work on the underlying contract. The Consultant agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for 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.

(b) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities** - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Consultant 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 Consultant agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in 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 Consultant 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.

(2) The Consultant 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.

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

### **49 CFR Part 26**

#### **Section 1101(b) of MAP-21 (23 U.S.C. § 101 note)**

1. NCTD encourages DBE participation in this solicitation. In order to qualify as a DBE, a Contractor, or a Contractor's sub-contractor, must be certified as a DBE under 49 CFR Part 26. As a recipient of Federal funds, NCTD must comply, and insure that it's Contractor(s) comply with 49 CFR Part 26 and Section 1101(b) of the Fixing America's Surface Transportation Act (FAST Act).
2. DBE Requirements/DBE Obligation:

- i. The Contract to be awarded may be funded in part by the U.S. Department of Transportation (DOT) FTA. As a condition of financial assistance agreements between NCTD and the U.S. DOT, NCTD has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
- ii. The Contract to be awarded may be funded in part by the U.S. DOT FTA. As a condition of financial assistance agreements between NCTD and the U.S. DOT, NCTD has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
- iii. Pursuant to Race-Neutral DBE policy directive issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving v. Washington State Department of Transportation* and the FTA's Guidance (Docket No. FTA-2006-24063; dated March 23, 2006), NCTD will strictly utilize race-neutral measures to meet its overall DBE goals and objectives. Contractors are encouraged to afford small businesses, including DBEs, an equitable opportunity to compete for and perform on a contract resulting from this solicitation.
- iv. The Contractor, and any of its sub-contractors, are to ensure that DBE as defined in 49 CFR Part 26 have equal opportunities to participate in the performance of NCTD contracts. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the equal opportunities to compete for and are awarded contracts. 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 U.S. DOT-assisted contract. Each subcontract the Contractor signs with a sub-contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- v. 1101(b) of the FAST Act extends the Federal statutory requirement that FTA make available at least 10 percent (10%) of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. NCTD and sub-recipients (Contractor and its sub-contractors) of FTA-funding assists FTA in meeting this national goal. To receive FTA assistance, NCTD and sub-recipients (Contractor and its sub-contractors) of FTA-funding must comply with applicable requirements of DOT regulations 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs".

### 3. DBE Financial Institutions

- i. The Contractor is to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage sub-contractors to make use of these institutions also.
- ii. A list of Minority Owned Banks is on the Federal Reserve website at <http://federalreserve.gov/releases/mob/current/default.htm>. The Federal Reserve website is updated periodically.
- iii. The Contractor is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial.

### 4. DBE Reporting and Certification

- i. Monthly reporting requires the submittal of a "Monthly Sub-contractor Payment Report", which is used by NCTD to verify payments to DBE and non-DBE sub-contractors. When completing this form, the Contractor must designate DBE sub-contractors by placing an asterisk in front of their name. As Federal law requires that NCTD have proof of payment to a DBE sub-contractor, the sub-contractor must initial the form and verify payment received. Failure to submit a properly executed form will result in delayed payment. Failure to submit these reports in a timely manner may result in a penalty of \$10 per day, per report.
- ii. In order for the Contractor to submit a properly executed "Monthly Sub-contractor Payment Report," the Contractor must verify that Sub-contractors DBE certification is current at time of payment.

- iii. Certified Contractors can be found at the State of California web site:  
[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

5. DBE Contract Assurance (49 CFR 26.13)

- i. NCTD does not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. NCTD takes all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts. NCTD's DBE Program as required by 49 CFR Part 26 and as approved by U.S. DOT will be incorporated by reference into the contract resulting from this solicitation.
- ii. 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 DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
  - a. Withholding monthly progress payments;
  - b. Assessing sanctions;
  - c. Liquidated damages; and/or
  - d. Disqualifying the Contractor from future bidding as non-responsible.

6. DBE Prompt Payment (49 CFR 26.29)

- i. Not later than ten (10) days after receipt of each progress payment from NCTD, the successful Offeror shall pay to any sub-Contractor performing any work, the respective amounts allowed to the successful Offeror for work performed by the sub-Contractor, to the extent of each sub-Contractor's interest therein, unless otherwise agreed to in writing. In addition, for projects that invoice only at the completion of the project, within seven (7) days of the successful Offerors receipt of released retention from NCTD upon completion of the project as defined in California Public Contract Code section 7107 the successful Offeror shall pay each of its sub-Contractors from whom retention has been withheld, each sub-Contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by NCTD, the successful Offeror shall pay each of its sub-Contractors from whom retention has been withheld, each sub-Contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. This clause applies to both DBE and non-DBE sub-Contractors.
- ii. Failure to comply with these provisions or delay in payment without prior written approval from NCTD will constitute noncompliance, which will result in appropriate administrative sanctions, including, but not limited to a penalty of 2% of the amount due per month for every month that payment is not made.

7. Civil Rights Policy Statements

- i. NCTD's DBE Policy Statement for its FTA approved DBE program is located at the following website: <http://www.gonctd.com/wp-content/uploads/2013/05/Policy-25.pdf>
- ii. NCTD's Discrimination Complaint Procedures Policy Statement for its Title VI/Unruh program is located at the following website:  
<http://www.gonctd.com/wp-content/uploads/2013/05/Policy-26.pdf>
- iii. NCTD's EEO Policy Statement for its EEO program is located at the following website:  
<http://www.gonctd.com/wp-content/uploads/2013/05/Policy-27.pdf>

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



**Applicability to Contracts:** The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

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

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, 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 Consultant shall not perform any act, fail to perform any act, or refuse to comply with any NCTD requests which would cause NCTD to be in violation of the FTA terms and conditions.

## **32. DRUG AND ALCOHOL TESTING**

**49 U.S.C. §5331  
49 CFR Part 655  
49 CFR Part 382**

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

**Flow down Requirements:** Anyone who performs a safety-sensitive function for the recipient or sub-recipient is required to comply with 49 CFR 655 as amended by MAP-21, with certain exceptions for contracts involving maintenance services. Maintenance CONSULTANTS for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance sub-consultants.

**Drug and Alcohol Testing:** The Consultant agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or NCTD, 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 consultant agrees further to certify annually its compliance with Part 655 before June 30 and to submit the Management Information System (MIS) reports before January 15 to NCTD. To certify compliance the Consultant 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.

## **33. TRANSIT VEHICLE MANUFACTURER (TVM) CERTIFICATIONS**

**49 CFR Part 26**

49 CFR §26.49 Consultant must submit to NCTD a certification from each transit vehicle manufacture that desires to bid or propose upon a DOT-assisted transit vehicle procurement that it has complied with the requirements of 49 CFR §26.49. NCTD may, however, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the overall goal-setting procedures.

## **34. METRIC REQUIREMENTS**

**15 U.S.C. §§205  
2007-Pub. L. 110-69**

As required by U.S. DOT or FTA, NCTD agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the NCTD agrees to accept products and services with dimensions expressed in the metric system of measurement.

## **35. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS**

**23 U.S.C. Section 517(d)**  
**23 U.S.C. §502**

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

**36. CORRIDOR PRESERVATION**

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

The Recipient agrees not to develop right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, in anticipation of its Project until all required environmental reviews for that Project have been completed.

**37. VETERANS EMPLOYMENT**

**49 U.S.C. 5325 (k)**

Veterans Employment. As provided by 49 U.S.C. § 5325(k):

- a. To the extent practicable, Contractor agrees that it:
  1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
  2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and
- b. Contractor also assures that its sub-contractor will:
  1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
  2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**END OF SECTION**



**FEMA**

# **CONTRACT PROVISIONS TEMPLATE**

**FEMA Office of Chief Counsel**

---

**Procurement Disaster Assistance Team**

## INTRODUCTION

If a non-Federal entity (state or non-state) wants to use federal funds to pay or reimburse their expenses for equipment or services under a contract, that contract **must** contain the applicable clauses described in [Appendix II to the Uniform Rules](#) (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326. In addition, there are certain contract clauses which are recommended by FEMA.

**This document outlines the federally required contract provisions in addition to FEMA-recommended provisions.**

- For some of the required clauses, sample language or references to find sample language are provided.
- Sample language for certain required clauses (remedies, termination for cause and convenience, changes) is not provided since these must be drafted in accordance with the non-Federal entity's applicable local laws and procedures.
- For the clauses which require that exact language be included, the required language is provided. Those clauses are specifically identified below.

**Please note that the non-Federal entity alone is responsible for ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.**



## TABLE OF CONTENTS

<b>I. TOOLS</b>	
1. CONTRACT PROVISIONS QUICK REFERENCE GUIDE .....	4
<b>II. REQUIRED CONTRACT PROVISIONS</b>	
1. REMEDIES.....	6
2. TERMINATION FOR CAUSE AND CONVENIENCE.....	6
3. EQUAL EMPLOYMENT OPPORTUNITY .....	6
4. DAVIS BACON ACT.....	10
5. COPELAND ANTI-KICKBACK ACT .....	11
6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.....	13
7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT... ..	14
8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT... ..	15
9. DEBARMENT AND SUSPENSION .....	16
10. BYRD ANTI-LOBBYING AMENDMENT.....	18
11. PROCUREMENT OF RECOVERED MATERIALS .....	21
<b>III. FEMA-RECOMMENDED CONTRACT PROVISIONS</b>	
1. ACCESS TO RECORDS.....	22
2. CHANGES/MODIFICATIONS .....	23
3. NON-USE OF DHS SEAL, LOGO, AND FLAGS.....	23
4. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS... ..	24
5. NO OBLIGATION BY THE FEDERAL GOVERNMENT .....	24
6. PROGRAM FRAUD AND FALSE/FRAUDULENT STATEMENTS OR RELATED ACTS....	25



## Required Contract Provisions: Quick Reference Guide

KEY	
Required/Recommended Provision	<input type="checkbox"/>
Required/Recommended Provision and Required Exact Language	<input type="checkbox"/>
Not Required for PA Awards (Grants)	<input type="checkbox"/>

	Required Provision	Contract Criteria	Sample Language?
1.	Legal/contractual/administrative remedies for breach of contract	> Simplified Acquisition Threshold (\$250k)	No. It is based on applicant's procedures.
2.	Termination for cause or convenience	> \$10k	No. It is based on applicant's procedures.
3.	Equal Employment Opportunity	Construction work	Yes. 41 CFR Part 60-1.4(b)
4.	Davis Bacon Act	Construction work	<b>Not applicable to PA grants</b>
5.	Copeland Anti-Kickback Act	Construction work > \$2k	<b>Not applicable to PA grants</b>
6.	Contract Work Hours and Safety Standards Act	> \$100k + mechanics or laborers	Yes. 29 CFR 5.5(b)
7.	Rights to inventions made under a contract or agreement	Funding agreement	<b>Not applicable to PA grants</b>
8.	Clean Air Act and Federal Water Pollution Control Act	>\$150k	Yes
9.	Debarment and Suspension	All	Yes
10.	Byrd Anti-Lobbying Amendment	All (>\$100k: Certification)	Yes. Clause and certification
11.	Procurement of Recovered Materials	Applicant is a state or political subdivision of a state. Work involves the use of materials.	Yes



## Recommended Contract Provisions: Quick Reference Guide

	Recommended Provision	Contract Criteria	Sample Language?
1.	Access to Records	All	Yes
2.	Contract Changes or Modifications	All	No. It depends on nature of contract and end-item procured.
3.	DHS Seal, Logo, and Flags	All	Yes
4.	Compliance with Federal Law, Regulations and Executive Orders	All	Yes
5.	No Obligation by Federal Government	All	Yes
6.	Program Fraud and False or Fraudulent Statements or Related Acts	All	Yes



## REQUIRED CONTRACT PROVISIONS

### 1. REMEDIES

- a. Standard. Contracts for more than the simplified acquisition threshold, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A).
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

### 2. TERMINATION FOR CAUSE AND CONVENIENCE

- a. Standard. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

### 3. EQUAL EMPLOYMENT OPPORTUNITY

**If applicable, exact language below in subsection 3.d is required.**

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II(C).





**b. Key Definitions.**

- i. Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
  - ii. Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
- c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- d. Required Language. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause.

During the performance of this contract, the contractor agrees as follows:

**(1)** The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for



employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

**(2)** The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

**(3)** The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

**(4)** The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**(5)** The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

**(6)** The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

**(7)** In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures



authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

**(8)** The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon



contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### 4. DAVIS-BACON ACT

- a. Standard. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II(D). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- b. Applicability. The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- c. Requirements. If applicable, the non-federal entity must do the following:
  - i. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
  - ii. Additionally, pursuant 2 C.F.R. Part 200, Appendix II(D), contracts subject to the Davis-Bacon Act, must also include a provision for compliance with



the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

- iii. Include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

Suggested Language. The following provides a sample contract clause:

Compliance with the Davis-Bacon Act.

- a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

## 5. COPELAND ANTI-KICKBACK ACT

- a. Standard. Recipient and subrecipient contracts must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).



- b. Applicability. This requirement applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. **It DOES NOT apply to the FEMA Public Assistance Program.**
- c. Requirements. If applicable, the non-federal entity must include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). Each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA. Additionally, in accordance with the regulation, each contractor and subcontractor must furnish each week a statement with respect to the wages paid each of its employees engaged in work covered by the Copeland Anti-Kickback Act and the Davis Bacon Act during the preceding weekly payroll period. The report shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work.

Sample Language. The following provides a sample contract clause:

Compliance with the Copeland “Anti-Kickback” Act.

- a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA 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 of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment



as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

## 6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- a. Standard. Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II(E). Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.
- b. Applicability. This requirement applies to all FEMA contracts awarded by the non-federal entity in excess of \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- c. Suggested Language. The regulation at 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

Compliance with the Contract Work Hours and Safety Standards Act.

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





**(2) *Violation; liability for unpaid wages; liquidated damages.*** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (b)(1) of this section, in the sum of \$27 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 (b)(1) of this section.

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

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

## **7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

- a. **Standard.** If the FEMA award meets the definition of “funding agreement” under 37C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under





Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II(F).

- b. Applicability. This requirement applies to “*funding agreements*,” but it **DOES NOT apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- c. Funding Agreements Definition. The regulation at 37 C.F.R. § 401.2(a) defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

## 8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

- a. Standard. If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II(G).
- b. Applicability. This requirement applies to contracts awarded by a non-federal entity of amounts in excess of \$150,000 under a federal grant.
- c. Suggested Language. The following provides a sample contract clause.

### Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as



amended, 42 U.S.C. § 7401 et seq.

2. The contractor agrees to report each violation to the (**name of applicant entering into the contract**) and understands and agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the (**name of the applicant entering into the contract**) and understands and agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

## **9. DEBARMENT AND SUSPENSION**

- a. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- b. Applicability. This requirement applies to all FEMA grant and cooperative



agreement programs.

**c. Requirements.**

- i. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II(H); and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530.
- ii. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipients.
- iii. Specifically, a covered transaction includes the following contracts for goods or services:
  1. The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
  2. The contract requires the approval of FEMA, regardless of amount.
  3. The contract is for federally-required audit services.
  4. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

**d. Suggested Language.** The following provides a debarment and suspension



clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

#### Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (**insert name of recipient/subrecipient/applicant**). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (**insert name of recipient/subrecipient/applicant**), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **10. BYRD ANTI-LOBBYING AMENDMENT**

- a. Standard. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any



Federal award. Such disclosures are forwarded from tier to tier up to the Federal awarding agency.

- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of \$100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.
- c. Suggested Language.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

- d. Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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.

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. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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

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

\_\_\_\_\_  
Date



## 11. PROCUREMENT OF RECOVERED MATERIALS

- a. Standard. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. § 200.322.
- b. Applicability. This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.
- c. Requirements. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- d. Suggested Language.
  - i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
    - 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
    - 2. Meeting contract performance requirements; or
    - 3. At a reasonable price.
  - ii. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
  - iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."





## RECOMMENDED CONTRACT PROVISIONS

The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. Although FEMA does not currently require additional provisions, **FEMA recommends** the following:

### 1. ACCESS TO RECORDS

- a. Standard. All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS/FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, Section 1225 of the Disaster Recovery Reform Act of 2018 prohibits FEMA from providing reimbursement to any state, local, tribal, or territorial government, or private non-profit for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.
- b. Suggested Language.

Access to Records. The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide (**insert name of state agency or local or Indian tribal government**), (**insert name of recipient**), the FEMA 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.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the FEMA Administrator or





his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the (**write in name of the non-federal entity**) and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

## 2. CHANGES

- a. Standard. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.
- b. Applicability. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

## 3. DHS SEAL, LOGO, AND FLAGS

- a. Standard. Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).
- b. Applicability. FEMA recommends that all non-Federal entities place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- c. Suggested Language.

“The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”



#### 4. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

- a. Standard. The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.
- b. Applicability. FEMA recommends that all non-Federal entities place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- c. Suggested Language.

“This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

#### 5. NO OBLIGATION BY FEDERAL GOVERNMENT

- a. Standard. FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.
- b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- c. Suggested Language.

“The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

#### 6. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- a. Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or



fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

- b. Applicability.** FEMA recommends that the non-Federal entity include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

- c. Suggested Language.**

“The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.”



**AMENDMENT #2 TO  
STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER**

This Amendment #2 supplements the terms of the underlying Agreement and Amendment #1 to set forth terms required by Grant Agreement #221-3018-18990. To the extent of any conflict between the requirements of this Amendment #2 and the requirements imposed by the underlying Agreement, this Amendment #2 shall control. To the extent of any conflict between the requirements of this Amendment #2 and Amendment #1, the more stringent requirement shall control. The remaining terms of the Agreement remain in full force and effect. The Owner and the Engineer hereby agree:

**1. Required Terms From Oregon Watershed Enhancement Board Grant Agreement #221-3018-18990.**

- (a) All requirements of the Oregon Watershed Enhancement Board Grant Agreement #221-3018-18990 applicable to this Contract are hereby incorporated into this Contract, and Engineer assumes to NCWC all obligations and requirements that are owed to the State under such Grant Agreement as such apply to Engineer.
- (b) Engineer shall comply with the applicable Oregon Aquatic Restoration Guideline under the Oregon Plan for Salmon and Watersheds. See <https://www.oregon.gov/OPSW/Pages/index.aspx>.
- (c) Engineer will document the expenditure of all moneys disbursed by NCWC under this Contract. Engineer will create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit the NCWC to verify how the moneys paid were expended, including without limitation accounting for all other funds expended, as well as in-kind services and donated materials.
- (d) Engineer will retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the moneys paid or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following termination or expiration of this Agreement. If there are unresolved audit questions or litigation at the end of the six-year period, Engineer will retain the records until the questions or litigation is resolved.
- (e) The Oregon Watershed Enhancement Board, the Secretary of State's Office of the State of Oregon, NCWC, PGE, the City of Milwaukie, the Resource Legacy Fund, and their duly authorized representatives will have access to the books, documents, papers and records of Engineer that are directly related to this Agreement, the moneys paid hereunder, or the Project for the purpose of making audits and examinations. In addition, Oregon Watershed Enhancement Board, the Secretary of State's Office of the State of Oregon, NCWC and their duly

authorized representatives may make and retain excerpts, copies and transcriptions of the foregoing books, documents, papers and records. Engineer will permit authorized representatives of the Oregon Watershed Enhancement Board, the Secretary of State's Office of the State of Oregon and NCWC to perform site reviews of all services delivered as part of the Project.

- (f) Engineer will not access private property without first obtaining written consent from the landowner of the private property.
- (g) Engineer acknowledges that all monitoring information obtained from private lands may become public information subject to the requirements of ORS 192.311 to 192.478.
- (h) Engineer shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement or to the Project. Without limiting the generality of the foregoing, Engineer expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement or the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations, (b) Titles VI and VII of the Civil Rights Act of 1964, as amended, (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (d) the Americans with Disabilities Act of 1990, as amended, (e) Executive Order 11246, as amended, (f) the Health Insurance Portability and Accountability Act of 1996, (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (i) all regulations and administrative rules established pursuant to the foregoing laws, and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement or the Project and required by law to be so incorporated. Engineer shall not discriminate against any individual, who receives or applies for services as part of the Project, on the basis of actual or perceived age, race, creed, religion, color, national origin, gender, disability, marital status, sexual orientation, age or citizenship. All employers, including Grantee, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under state law.
- (i) Subject to the limitations of the Oregon Tort Claims Act (ORS 30.260 - 30.300), Engineer will defend (subject to any limitation imposed by ORS Chapter 180), save, hold harmless, and indemnify the State of Oregon and the Oregon Watershed Enhancement Board and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities of Engineer or its officers, employees, contractors, or agents under this Agreement or in the implementation of the Project.

- (j) Any legal action or proceeding against any other party arising out of or relating to Grant Agreement #221-3018-18990 shall be brought in the Circuit Court of the State of Oregon for Marion County. For claims subject to this paragraph, each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- (k) In addition to any other insurance requirements imposed in the Agreement, Engineer shall carry the minimum insurance types and amounts described below:

Insurance Type	Minimum Amount
General liability	\$1,000,000 per occurrence, \$2,000,000 annual aggregate
Auto liability	\$1,000,000 combined single limit

Engineer shall provide to NCWC Certificate(s) of Insurance for all required insurance. As proof of insurance the NCWC has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement. Engineer or the insurer must provide at least 30 days' written notice to NCWC before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

- (l) During the performance of this contract, Engineer agrees as follows:

(1) The Engineer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Engineer will, in all solicitations or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Engineer will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or

applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Engineer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Engineer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Engineer's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Engineer may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Engineer will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Engineer will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

- (m) Engineer agrees to ensure that all conference, meeting, convention, or training space funded by payments from NCWC complies with the Hotel and Motel Fire Safety Act of 1990.
- (n) To the extent necessary, Engineer agrees to comply with the requirements of 2 CFR 200.501.
- (o) If applicable, Engineer agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying and to submit certification and disclosure forms accordingly.
- (p) Engineer certifies that none of the funds received from NCWC directly or indirectly funds terrorist activities and that it is not involved in, nor does it fund, either directly or indirectly, any terrorist activities.
- (q) Engineer hereby grants to NCWC and those providing grant funds to the Project a free irrevocable license to use, publish or distribute all materials, which may include, but is not limited to reports, studies, photographs (and negatives), computer programs, drawings, writings or other similar works or documents, along with all supporting data and material, produced under this Agreement.
- (r) Engineer shall ensure compliance with all applicable laws and regulations in the performance of activities under this Agreement, including, without limitation, those laws or requirements regarding authority to conduct business, permits, licenses, tax, employment, reporting, data protection, lobbying and contacts with government officials (including the provision of gifts) as well as the Telephone Consumer Protection Act of 1991, as amended, and any and all other laws, of any applicable jurisdiction, governing the work performed. Engineer further agrees that no funds received under this agreement will be used to engage in civil disobedience.
- (s) Engineer shall not use any portion of the funds received from NCWC for reportable or disclosable activities under applicable state or local campaign finance disclosure or election laws, such as ballot measure contributions.
- (t) Engineer shall not use the funds received from NCWC in any attempt to influence legislation within the meaning of Internal Revenue Code sections 501(h), 4911, 4945(d)(1) or (e). For purposes of this Agreement, this prohibition shall include but not be limited to any attempt to influence legislation at any governmental level.
- (u) Engineer shall not use any of the Grant funds for any of the following purposes: to influence the outcome of any specific public election, or to conduct, directly or indirectly, any voter registration drive, within the meaning of Internal Revenue Code Section 4945(d)(2); to induce or encourage violations of law or public



policy; to cause any private inurement or improper private benefit to occur; to take any action that would, or reasonably could, jeopardize its tax-exempt status under Internal Revenue Code Section 501(c)(3); to provide a grant to an individual or organization which does not comply with the requirements of Internal Revenue Code sections 4945(d)(3) and (4); or, for any other purpose that is not charitable, scientific, or educational, within the meaning of Internal Revenue Code Section 170(c)(2)(B).

**OWNER:**

By: \_\_\_\_\_

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

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

**ENGINEER:**

By: \_\_\_\_\_

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

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



U.S. Department  
of Transportation

**Federal Transit  
Administration**

# CIRCULAR

**FTA C 4220.1F**

November 1, 2008  
Rev. 1, April 14, 2009  
Rev. 2, July 1, 2010  
Rev. 3, February 15, 2011  
Rev. 4, March 18, 2013

**Subject: THIRD PARTY CONTRACTING GUIDANCE**

---

1. PURPOSE. This circular provides contracting guidance for recipients of Federal assistance awarded by the Federal Transit Administration (FTA) when using that Federal assistance to finance its procurements (third party contracts). This revision incorporates the new procurement provisions of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP 21), Pub. L., 112-141, July 2012, and includes the most current available guidance for the Federal public transportation program as of the date of publication.
2. CANCELLATION. This circular cancels FTA Circular 4220.1E, "Third Party Contracting Requirements," dated 06-19-03.
3. AUTHORITY. Federal Transit Laws, Title 49, United States Code, Chapter 53.
4. WAIVER. FTA reserves the right to waive any provision of this circular to the extent permitted by Federal law or regulation.
5. FEDERAL REGISTER NOTICE. In conjunction with publication of this circular, a *Federal Register* notice was published on September 30, 2008 (73 FR 56896), addressing comments received during the development of the circular.
6. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to update this circular due to changes in other revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this circular. FTA will post updates on our Web site: <http://www.fta.dot.gov/>. The Web site allows the public to register for notification when FTA issues *Federal Register* notices or new guidance; visit the Web site and click on "Sign-up for e-mail updates."
7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats; telephone FTA's Administrative Services Help Desk, 202-366-4865. Individuals with hearing impairments may contact the Federal Relay Service, 1-800-877-8339 for assistance with the call.

James S. Simpson  
Administrator

11/01/2008  
 Rev. 1, 04/14/2009  
 Rev. 2, 07/01/2010  
 Rev. 3, 02/15/2011  
 Rev. 4, 03/18/2013

## THIRD PARTY CONTRACTING GUIDANCE

### TABLE OF CONTENTS

<u>CHAPTER</u>	<u>PAGE</u>
I. <u>INTRODUCTION AND ROLE OF THE FEDERAL TRANSIT ADMINISTRATION</u> .....	4
1. The Federal Transit Administration (FTA) .....	4
2. Authorizing Legislation .....	4
3. How to Contact FTA .....	4
4. Background .....	5
5. Definitions .....	5
6. FTA's Role .....	11
II. <u>APPLICABILITY</u> .....	1
1. Legal Effect of the Circular .....	1
2. Applicability of the Circular .....	1
3. Federal Laws and Regulations .....	9
4. State and Local Laws and Regulations .....	10
III. <u>THE RECIPIENT'S RESPONSIBILITIES</u> .....	1
1. Written Standards of Conduct .....	1
2. Self-Certification .....	1
3. Third Party Contracting Capacity .....	1
4. Audit .....	7
5. Fraud .....	8
IV. <u>THE RECIPIENT'S PROPERTY AND SERVICES NEEDS AND FEDERAL REQUIREMENTS AFFECTING THOSE NEEDS</u> .....	1
1. Determining the Recipient's Needs .....	1
2. Federal Requirements That May Affect a Recipient's Acquisitions ..	3
V. <u>SOURCES</u> .....	1
1. Force Account .....	1
2. Shared Use .....	1
3. Joint Procurement .....	1
4. State or Local Government Purchasing Schedules or Purchasing Contracts .....	2
5. Federal Excess and Surplus Property.....	3

11/01/2008  
 Rev. 1, 04/14/2009  
 Rev. 2, 07/01/2010  
 Rev. 3, 02/15/2011  
 Rev. 4, 03/18/2013

6. Federal Supply Schedules .....	3
7. Existing Contracts .....	5
8. The Open Market .....	10

<u>CHAPTER</u>	<u>PAGE</u>
----------------	-------------

VI.	<u>PROCEDURAL GUIDANCE FOR OPEN MARKET</u>	
	<u>PROCUREMENTS</u> .....	1
1.	Competition Required .....	1
2.	Solicitation Requirements and Restrictions .....	2
3.	Methods of Procurement .....	7
4.	Eligible Costs .....	21
5.	Incentive Costs and Payments .....	21
6.	Cost Analysis and Price Analysis .....	22
7.	Evaluations .....	23
8.	Contract Award .....	24
VII.	<u>PROTESTS, CHANGES AND MODIFICATIONS,</u>	
	<u>DISPUTES, CLAIMS, LITIGATION, AND SETTLEMENTS</u> .....	1
1.	Protests .....	1
2.	Changes and Modifications .....	4
3.	Disputes .....	5
4.	Claims and Litigation .....	7
5.	FTA Participation in Settlements, Arbitration Awards, and	
	Court Awards .....	8

APPENDICES

APPENDIX A	<u>REFERENCES</u> .....	1
APPENDIX B	<u>FTA REGIONAL AND METROPOLITAN OFFICE</u>	
	<u>CONTACT INFORMATION</u> .....	1
APPENDIX C	<u>THIRD PARTY CONTRACTING CHECKLISTS</u> .....	1
APPENDIX D	<u>PROVISIONS, CERTIFICATIONS, REPORTS, FORMS,</u>	
	<u>AND OTHER—MATRICES</u> .....	1
INDEX	<u>SUBJECT AND LOCATION IN CIRCULAR</u>	



# Procurement Disaster Assistance Team (PDAT) Field Manual

Procurement Information for FEMA Award Recipients  
and Subrecipients

October 2021

(FM-207-21-0002)



FEMA

This page intentionally left blank

## Contents

FOREWARD .....	1
<b>Chapter 1: Introduction.....</b>	<b>3</b>
1. Overview .....	3
2. Navigating the Manual.....	4
3. Additional Resources .....	5
<b>Chapter 2: Applicability of the Federal Procurement Under Grant Standards .....</b>	<b>6</b>
1. Overview of Contracts.....	6
1.1. Use of Contractors by Recipients and Subrecipients.....	6
1.2. Role of The Federal Government in Recipient and Subrecipient Contracting.....	6
1.3. Definition of Contract and Distinction from Subaward .....	6
1.4. Contract Payment Obligations .....	7
1.5. Fixed Price and Cost-Reimbursement Contracts.....	7
2. Applicability .....	9
2.1. Procurement by State Entities .....	9
2.2. Procurement by Non-State Entities .....	10
<b>Chapter 3: General Procurement Under Grant Standards.....</b>	<b>15</b>
1. Mandatory Standards .....	15
1.1. Maintain Oversight .....	16
1.2. Written Standards of Conduct .....	16
1.3. Gifts.....	16
1.4. Conflicts of Interests .....	17
1.5. Disciplinary Actions .....	19
1.6. Need Determination.....	20
1.7. Contractor Responsibility Determination.....	22
1.8. Maintain Records .....	24
1.9. Contractor Selection.....	25
1.10. Settlement of Issues .....	27

2. Time-and-Materials Contracts .....	28
2.1. Considerations for State Entities using T&M Contracts.....	28
3. Encouraged Standards .....	29
3.1. Use of Federal Excess and Surplus Property .....	29
3.2. Use of Value Engineering .....	30
3.3. Use of Intergovernmental or Inter-Entity Agreements.....	30
<b>Chapter 4: Competition.....</b>	<b>32</b>
1. Restrictions to Competition .....	32
1.1. Unreasonable Requirements.....	33
1.2. Requiring Unnecessary Experience or Excessive Bonding .....	33
1.3. Noncompetitive Pricing Practices.....	34
1.4. Noncompetitive Contracts to Contractors on Retainer .....	35
1.5. Organizational Conflicts of Interest.....	36
1.6. Specifying Only a Brand Name Product .....	37
1.7. Any Arbitrary Action in the Procurement Process.....	38
2. Geographic Preferences .....	38
2.1. Exclusion of Contractors from Outside a Geographic Area.....	38
2.2. Price Matching.....	38
2.3. Reducing Bids.....	38
2.4. Adding Weight to Evaluation Factors .....	39
2.5. Set Asides .....	39
3. Written Procedures .....	40
3.1. Clear and Accurate Description of Requirements.....	40
3.2. Nonrestrictive Specifications .....	41
3.3. Qualitative Requirements .....	41
3.4. Product Specifications .....	41
3.5. Identify All Requirements/Evaluation Factors.....	41
4. Prequalified Lists .....	41
<b>Chapter 5: Methods of Procurement.....</b>	<b>43</b>



<b>1. Informal Methods.....</b>	<b>43</b>
1.1. Procurement by Micro-Purchases .....	43
▪ <b>Competition</b> .....	44
▪ <b>Prohibited Divisions</b> .....	44
▪ <b>Documentation</b> .....	44
▪ <b>Responsibility</b> .....	44
1.2. Procurement by Small Purchases .....	44
<b>2. Formal Methods.....</b>	<b>45</b>
2.1. Procurement by Sealed Bidding.....	45
2.2. Procurement by Proposals.....	48
<b>3. Noncompetitive Procurement.....</b>	<b>51</b>
3.1. Procurement by Micro-Purchase .....	51
3.2. Single Source.....	51
3.3. Public Emergency or Exigency .....	52
3.4. Federal Awarding Agency or Pass-Through Entity Approval .....	54
3.5. Inadequate Competition .....	55
▪ <b>Justification and Documentation:</b> .....	56
▪ <b>Negotiation of Profit:</b> .....	56
▪ <b>Ensure Compliance with Additional Requirements:</b> .....	56
3.6. Suggested Elements for Noncompetitive Procurement Justification.....	57
<b>Chapter 6: Socioeconomic Contracting.....</b>	<b>59</b>
<b>1. Affirmative Steps.....</b>	<b>59</b>
1.1. Solicitation Lists .....	59
1.2. Soliciting.....	59
1.3. Dividing Requirements.....	59
1.4. Delivery Schedules .....	60
1.5. Obtaining Assistance.....	60
1.6. Prime Contractor Requirements.....	60
<b>2. Definitions for Socioeconomic Firms .....</b>	<b>61</b>
2.1. Small Business .....	61

2.2.	Women’s Business Enterprise.....	61
2.3.	Minority Business .....	61
2.4.	Labor Surplus Area.....	62
2.5.	Labor Surplus Area Firm .....	62
<b>Chapter 7: Domestic Preferences .....</b>		<b>64</b>
1.	<b>Domestic Preferences for Procurement.....</b>	<b>64</b>
1.1.	Applicability.....	64
1.2.	Definitions.....	64
<b>Chapter 8: Procurement of Recovered Materials.....</b>		<b>66</b>
1.	Inapplicability to Indian Tribes and Private Nonprofit NFEs .....	66
2.	EPA Product Designation .....	67
3.	Affirmative Procurement Program.....	67
4.	Solid Waste Disposal Services .....	68
5.	Certifications .....	68
<b>Chapter 9: Cost or Price Analysis .....</b>		<b>69</b>
1.	Price Analysis .....	69
2.	Cost Analysis .....	70
3.	Cost Plus a Percentage of Cost Contracts .....	71
3.1.	Four-Part Analysis.....	71
3.2.	Considerations for State Entities using CPPC Contracts .....	72
<b>Chapter 10: Federal Awarding Agency/Pass-Through Entity Review.....</b>		<b>74</b>
1.	<b>Pre-Award Procurement Review .....</b>	<b>74</b>
1.1.	Technical Specifications .....	74
1.2.	Procurement Documents.....	74
2.	<b>Exemption .....</b>	<b>75</b>
2.1.	FEMA or Pass-Through Entity Review.....	75
2.2.	Self-Certification .....	75
3.	<b>Post-Award Procurement Review .....</b>	<b>76</b>

<b>Chapter 11: Bonding Requirements .....</b>	<b>77</b>
1. Bid Guarantee .....	77
2. Performance Bond .....	78
3. Payment Bond .....	78
<b>Chapter 12: Contract Provisions .....</b>	<b>80</b>
1. Required Provisions .....	80
1.1. Contract Remedies .....	80
1.2. Termination for Cause and Convenience .....	81
1.3. Equal Employment Opportunity .....	81
1.4. Davis-Bacon Act .....	82
1.5. Copeland Anti-Kickback Act .....	83
1.6. Contract Work Hours and Safety Standards Act .....	83
1.7. Rights to Inventions Made Under a Contract or Agreement .....	83
1.8. Clean Air Act and the Federal Water Pollution Control Act .....	84
1.9. Suspension and Debarment .....	84
1.10. Byrd Anti-Lobbying Amendment .....	85
1.11. Procurement of Recovered Materials .....	86
1.12. Prohibition on Contracting for Covered Telecommunications Equipment or Services .....	86
1.13. Domestic Preferences for Procurements .....	87
2. FEMA Recommended Provisions .....	87
2.1. Access to Records .....	87
2.2. Changes and Modifications .....	87
2.3. DHS Seal, Logo, and Flags .....	88
2.4. Compliance with Federal Law, Regulations, and Executive Orders .....	88
2.5. No Obligation by the Federal Government .....	88
2.6. Program Fraud and False or Fraudulent Statements or Related Acts .....	88
2.7. Affirmative Socioeconomic Steps .....	89
2.8. Copyright .....	89
<b>Chapter 13: Beyond the Basics: Important Procurement Considerations .....</b>	<b>90</b>

<b>1. Considerations for Indian Tribal Governments .....</b>	<b>91</b>
1.1. Indian Tribal Preferences When Awarding Contracts.....	91
1.2. Inapplicability of the Socioeconomic Affirmative Steps.....	92
<b>2. Contract Changes/Modifications .....</b>	<b>93</b>
2.1. Scope of the Contract .....	94
2.2. Scope of Competition.....	94
<b>3. Design-Bid-Build and Design-Build Contracts .....</b>	<b>94</b>
3.1. Design-Bid-Build .....	94
3.2. Design-Build Contracts.....	95
<b>4. CMAR Delivery Method .....</b>	<b>96</b>
4.1. Price as a Selection Factor for CMAR .....	96
<b>5. Cooperative Purchasing.....</b>	<b>97</b>
5.1. Joint Procurements .....	97
5.2. Joint Procurements between State and Non-State Entities .....	98
5.3. Using Another Jurisdiction’s Contract (Piggybacking).....	99
5.4. Non-State Entities and Piggybacking .....	99
5.5. State Entities and Piggybacking.....	99
<b>6. Cooperative Purchasing Programs.....</b>	<b>100</b>
6.1. Use of General Services Administration Schedules.....	100
6.2. Other Supply Schedules and Cooperative Purchasing Programs .....	101
<b>7. Prepositioned Contracts for Disaster Grants .....</b>	<b>103</b>
7.1. Non-State Entities and Prepositioned Contracts.....	104
7.2. State Entities and Prepositioned Contracts.....	104
<b>8. Mutual Aid Agreements .....</b>	<b>105</b>
<b>9. Purchasing Agents .....</b>	<b>106</b>
9.1. Non-State Entities and Purchasing Agents .....	106
9.2. State Entities and Purchasing Agents.....	107
<b>Chapter 14: Remedies for Procurement Noncompliance .....</b>	<b>108</b>
1. Remedies for Noncompliance .....	108
2. Specific Conditions .....	109

APPENDIX .....	110
ACRONYM REFERENCE .....	110
DEFINITIONS .....	111