

Federal Transit Administration (FTA) Clauses for Construction Contracts as per FTA Master Agreement MA (30) dated March 26, 2025

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

***Applicable to ALL FTA assisted contracts and subcontracts.
Applicable to all procurement types or amounts***

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

FALSE OR FRAUDULENT STATEMENTS OR CLAIMS – CIVIL AND CRIMINAL FRAUD 31 U.S.C. § 3801, et seq

**49 CFR Part 31
49 U.S.C. § 5323(l)(1)
18 U.S.C. § 1001**

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5323, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

ACCESS TO THIRD PARTY CONTRACT RECORDS **49 U.S.C. § 5325(g)**

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

- (1) Contractor shall retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- (2) Contractor shall comply with the record retention requirements in accordance with 2 CFR § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- (3) Contractor also agrees:
 - To provide the U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all its subcontractors contract records (at any tier) as required under 49 U.S.C. § 5325(g).
 - To provide sufficient access to all of its subcontractors contract records (at any tier) as needed for compliance with applicable federal laws, regulations, and requirements or to assure proper management of Underlying Agreement as determined by FTA.
- (4) Contractor shall permit FTA, the Agency, and their duly authorized representatives' access to the sites of performance under this Contract as reasonably may be required.

CHANGES TO FEDERAL REQUIREMENTS **31 U.S.C. § 3729, et seq.**

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- (5) Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in Section 3.j.(1) of the FTA Master Agreement MA(34), dated November 26, 2025, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.
- (6) Any current or prospective legal matter with potentially serious consequences, including a major dispute, default, breach, or litigation, or knowledge that the Contractor's principal, official, employee, agent, or a Subcontractor's Participant, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance; suspension, debarment, or other similar administrative or enforcement action against the Recipient or any Third Party Participant; or any matter or situation, including any other change or legal action that may adversely affect the Federal Government's interest in a Project or related activities.

NOTICE TO FTA AND US DOT IG OF INFORMATION RELATED TO FRAUD, ETC. **C.F.R. §§ 180.220 and 1200.220 31 U.S.C. § 3729, et seq.**

Applicable to all contracts and subcontracts in excess of \$25,000

If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the AGENCY, which must then promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region 9. Contractor must include an

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equivalent provision in its subagreements at every tier for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) **Types of Legal Matters Requiring Notification.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) **Matters Affecting the Federal Government.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the Contract, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- (3) **Additional Notice to U.S. DOT Inspector General.** Contractor must promptly notify the AGENCY, which must then promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for Region 6 if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision also applies to all divisions of the AGENCY, including divisions tasked with law enforcement or investigatory functions.

CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 621 – 634; 42 U.S.C. § 2000; 29 U.S.C. § 794;
42 U.S.C. § 6101; 42 U.S.C. § 12112; 21 U.S.C. § 1101, et seq.;
42 U.S.C. § 12101; 49 U.S.C. § 5332; 29 CFR Part 1625;
41 CFR Parts 60; 29 CFR Part 1630; 36 CFR Part 1194;
49 CFR Parts 21, 25, 26, 38, 39, 609; 28 CFR Parts 35, 36;
18 U.S.C. § 1001; 45 CFR Part 90; 31 U.S.C. § 3801, et seq.;
20 U.S.C. § 1681, et seq.; 42 U.S.C. § 4151, et seq.;**

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- (1) The Recipient agrees that it must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or a federal program, including the Indian Tribe Recipient or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.
- a. **Nondiscrimination in Federal Public Transportation Programs.**
 - i. **Contractor must prohibit:** (a) discrimination based on race, color, religion, national origin, sex (including sexual orientation), disability, or age; (b) exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332; (c) denial of program benefits in employment or a business

opportunity identified in 49 U.S.C. § 5332; and (d) discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.

- ii. **Contractor must follow the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients,"** to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

b. Nondiscrimination – Title VI of the Civil Rights Act.

- i. Contractor must prohibit discrimination based on race, color, or national origin,
- ii. Contractor must comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21; and (c) Federal transit law, specifically 49 U.S.C. § 5332; and
- iii. Contractor must follow: (a) the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance; (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3; and (c) all other applicable federal guidance that may be issued.

c. Equal Employment Opportunity.

- i. **Federal Requirements and Guidance.** Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation or national origin. Contractor must also comply with: (a) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; (b) Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; (c) federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; and (e) FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients." Further, Contractor must follow other federal guidance pertaining to EEO laws, regulations, and requirements.

- d. **Indian Tribes.** The Recipient agrees to, and assures that each third Party Participant will recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer;"
- e. **Equal Employment Opportunity for Construction Activities. See details under Special EEO Provision for Construction of this document.**

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Applicable to contracts awarded on the basis of a bid / proposal offering to use DBEs

- (1) To the extent authorized by applicable federal laws, regulations, or requirements, the Recipient agrees to facilitate, and assures that each Contractor and Subcontractor will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Underlying Agreement as follows:

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(1) *Statutory and Regulatory Requirements.* The Contractor agrees to comply with:

- i) Section 11101(e) of IJIA;
- ii) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26; and
- iii) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of FTA Master Agreement.

(2) *Special Requirements for a Transit Vehicle Manufacturer (TVM).* The Recipient agrees that:

- i) *TVM Certification.* Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 CFR Part 26; and
- ii) *Reporting TVM Awards.* Within 30 days of any third party contract award for a transit vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract using the Transit Vehicle Award Reporting Form on FTA's website. The Recipient must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.

(3) *Assurance.* As required by 49 C.F.R. § 26.13(a):

i) *Recipient Assurance.* The Contractor agrees and assures that:

- (A) It must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 CFR Part 26;
- (B) It must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
- (C) Its DBE program, as required under 49 CFR Part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement; and
- (D) Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.

ii) *Subrecipient / Third Party Contractor / Third Party Subcontractor Assurance.* The Contractor agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:

- (A) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 CFR Part 26;
- (B) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and

administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable;

(C) Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 12.e(4)(ii) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable; and

(D) The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.

(4) *Remedies.* Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 CFR Part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801, et seq.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1G, as may be amended

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

TERMINATION

**49 U.S.C. Part 18
FTA Circular
4220.1G 2 CFR
Part 200 and
Appendix II to
Part 200.**

Applicable to AWARDS EXCEEDING \$10,000 Applicable to all procurement types

- (1) The termination rights under this Contract are in addition to, and in no way limit, the Federal Government's right to terminate as described in 2 CFR § 200.340.
- (2) The AGENCY must include provisions in their contracts and subcontracts that allows for termination for cause and for convenience by the AGENCY, including the manner by which it will be effected and the basis for settlement. See Appendix II(B) to 2 CFR part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and FTA Circular 4220.1G, Chapter IV, paragraph 2.b.(9)(b) – Termination.

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

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

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

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

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

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

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

f. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a

Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

g. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The

(Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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

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

Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

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

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

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

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

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

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

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

DEBARMENT AND SUSPENSION **2 CFR Part 180 2 CFR Part 1200**

Applicable to AWARDS EXCEEDING \$25,000 Applicable to all procurement types

The Contractor agrees to the following:

- (1) It will comply with the requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200.
- (2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any Subcontractor that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by:
 - i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200; ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180; and iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants.
- (3) It will review the U.S. GSA "System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR Part 1200.
- (4) It will ensure that its Subcontract Agreements contain provisions necessary to flow down these suspension and debarment provisions to all lower tier covered transactions.
- (5) By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the **City of El Paso**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the **City of El Paso**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 CFR part 180, Subpart C as supplemented by 2 CFR part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

LOBBYING **31 U.S.C. 1352, as amended** **49 CFR Part 20** **2 CFR Appendix II (I)**

Applicable to AWARDS EXCEEDING \$100,000
Applicable to all procurement types

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

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award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

2 C.F.R. §§ 180.220
2 C.F.R. §§ 1200.220
31 U.S.C. § 3729, et seq.

***Applicable to AWARDS EXCEEDING \$25,000
Applicable to all procurement types***

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 City of El Paso. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of City of El Paso. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of City of El Paso shall be binding upon the Contractor and the Contractor shall abide by the decision. **Performance During Dispute** - Unless otherwise directed by City of El Paso, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

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

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

CLEAN AIR

42 U.S.C. §§ 7401 – 7671q.
2 CFR Appendix III(G)

***Applicable to AWARDS EXCEEDING \$150,000 Applicable
to all procurement types***

(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 – 7671q. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

CLEAN WATER

33 U.S.C. §§ 1251 – 1388

***Applicable to AWARDS EXCEEDING \$150,000 Applicable to all
procurement types***

(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 – 1388. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

BUY AMERICA REQUIREMENTS

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

***Applicable to AWARDS EXCEEDING \$150,000 Applicable to
rolling stock purchases, construction and materials & supplies
procurement types***

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts.

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

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

(3) Construction materials used in FTA-funded projects are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the Recipient shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products

CARGO PREFERENCE REQUIREMENTS

46 U.S.C. § 55305
46 CFR Part 381

Federal Transit Administration (FTA) Clauses for Constructions Contracts as per FTA Master Agreement MA (30) dated March 26, 2025

**Applicable to AWARDS involving transport by ocean vessel
Applicable to rolling stock purchases, construction and materials
& supplies procurement types**

The contractor agrees:

- (1) 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;
- (2) 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.), and
- (3) To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

FLY AMERICA

49 U.S.C. §40118 41 C.F.R. §§ 301-10.131 – 301-10.143

**Applicable to AWARDS involving the transportation of persons or property by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation
Applicable to all procurement types**

- (1) The Contractor agrees to comply with 49 U.S.C. 40118 (Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 - the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.
- (2) The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.
- (3) The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

EMPLOYEE PROTECTIONS

**DAVIS-BACON, COPELAND ANTI-KICKBACK AND
CONTRACT WORK HOURS AND SAFETY STANDARDS ACTS
40 U.S.C. §§ 3141 – 3148 29
CFR Parts 3 and 5
2 CFR Part 200, Appendix II
40 U.S.C. §§ 3701 – 3708**

Applicability explained below

(1) Prevailing Wage & Anti-Kickback. (These requirements apply to all prime construction, alteration, or repair contracts in excess of \$2,000.)

- For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, Contractor shall 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, Contractor shall pay wages not less than once a week. Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 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." Contractor or subcontractor is 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 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.

(2) Contract Work Hours/Safety Standards for Awards Involving Construction. (These requirements apply to all contracts involving construction in excess of \$100,000 that involve the employment of mechanics or laborers.)

- For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 CFR part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, 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. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

- In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, 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 this clause 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 this clause.

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- The FTA 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 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 this section.

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

(3) Contract Work Hours/Safety Standards for Awards Not Involving Construction. *(These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.)*

- Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR part 5.

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

- Payrolls and basic records -

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the

commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

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BONDING FTA Circular C 4220.1G

Applicable to all CONSTRUCTION contracts Applicable to AWARDS EXCEEDING simplified acquisition threshold of \$250,000

(1) Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the AGENCY if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

(2) **Construction.** As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Underlying Agreement that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.

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

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

C. A **payment bond** on the part of Contractor for 100% (100 percent) of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

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

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

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

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

(7) **Activities Not Involving Construction.** For each Project or related activities implementing the Underlying Agreement not involving construction, the Recipient will not impose excessive bonding and will follow FTA guidance.

SEISMIC SAFETY 42 U.S.C. § 7701, et seq. 49 CFR Part 41

Applicable to all CONSTRUCTION contracts that involve construction of new buildings or additions to existing buildings

(1) The Contractor agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701, et seq., and U.S. DOT regulations, "Seismic Safety," 49 CFR Part 41, specifically, 49 C.F.R. § 41.117.

(2) The Contractor will certify its compliance with the seismic design and construction requirements of 49 CFR part 41. Such statements of compliance may include the engineer's and architect's authenticated verifications of seismic design codes, standards, and practices used in the design and construction of the building, construction observation reports, local or state building department plan review documents, or other documents deemed appropriate by the DOT Operating Administration.

(3) The Contractor shall ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

VETERANS PREFERENCE 49 U.S.C. § 5325(k) 5 U.S.C. § 2108

Applicable to AWARDS EXCEEDING \$150,000 Applicable to all CONSTRUCTION contracts

The Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C. § 2108) who have the skills and abilities to perform construction work required under the Contract. This requirement shall not be understood, construed or enforced in any manner that would 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.

ENVIRONMENTAL PROTECTIONS

Applicable to all procurement types

(1) The contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

(2) **National Environmental Policy Act.** The Contractor and its subcontractors shall:

1. Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: i) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139;
 - i) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 CFR Part 1500 – 1508; ii) iii) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622; iii) iv) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note (35 Fed. Reg. 4247); and iv) v) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or

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the Award, the accompanying Underlying Agreement, and any Amendments thereto.

2. Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation:

- i) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013;
- ii) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and iii) Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.

- (3) **Other Environmental Federal Laws.** The Contractor shall comply or facilitate compliance, and assures that its subcontractors will comply or facilitate compliance, with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order No. 11988, as amended, "Floodplain Management."

- (4) **Corridor Preservation.** The Contractor agrees that:

1. It will not develop any right-of-way acquired under 49 U.S.C. § 5323(q) in anticipation of implementing its Award until all required environmental reviews for each Project or related activities have been completed; and
2. It will follow FTA Final Guidance on the Application of 49 U.S.C. § 5323(q) to Corridor Preservation for a Transit Project, October 27, 2014.

- (5) **Use of Certain Public Lands.** The Contractor shall comply, and assures that its subcontractors will comply, with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 CFR Part 774, and referenced in 49 CFR Part 622.

- (6) **Historic Preservation.** The Contractor shall, and assures that its subcontractors will:

1. Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places.
2. Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108.
3. Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501, et seq.
4. Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 CFR Part 800.
5. Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.

- (7) **Indian Sacred Sites.** The Contractor shall, and assures that its subcontractors will, facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native

Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note (61 Fed. Reg. 26771).

(8) Mitigation of Adverse Environmental Effects.

1. The Contractor shall comply with all environmental mitigation measures that may be identified as conditions that the Federal Government might impose in its finding of no significant impact or record of decision or commitments in the environmental documents that apply to the Award, such as environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. § 303, and other environmental documents.
2. The Contractor agrees that:
 - i) Any mitigation measures agreed on will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto;
 - ii) Any deferred mitigation measures will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto as soon as agreement with the Federal Government is reached; and
 - iii) Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the Federal Government.

- (9) **Energy Conservation.** The Contractor shall, and assures that its Subrecipients will, comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 CFR Part 622, subpart C.

RECOVERED MATERIALS

42 U.S.C. 6962

40 CFR Part 247

Section 6002 of the Solid Waste Disposal Act; 2 CFR 200.323; 2 CFR Appendix II (J).

Applicable to all procurement types when procuring \$10,000 or more per year of items designated by EPA

- (1) The Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 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 during 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.

CONFORMANCE WITH NATIONAL ITS ARCHITECTURE

23 U.S.C. § 517(d)

Applicable to all procurement types and solicitations for ITS projects

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The Contractor shall conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and to follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

NONDISCRIMINATION ON THE BASIS OF DISABILITY

**29 U.S.C. § 794 42
U.S.C. § 12101, et seq.
42 U.S.C. § 4151, et
seq. 49 U.S.C. § 5332**

Applicable to all Contracts for rolling stock or facilities construction/renovation

The Contractor shall comply, and assures the compliance of each subcontractor with the with the following federal prohibitions against discrimination based on disability:

(1) Federal laws, including:

- i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
- ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., which requires that accessible facilities and services be made available to individuals with disabilities.
- iii) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
- iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
- v) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.

(2) Federal regulations and guidance, including:

- i) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; ii) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27; iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38; iv) U.S. DOT regulations, "Transportation for Individuals with

Disabilities: Passenger Vessels," 49 CFR Part 39;

- v) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35; vi) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36; vii) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630; viii) U.S. Federal Communications Commission regulations,

"Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 CFR Part 64, subpart F; ix) U.S. ATBCB regulations, "Electronic and Information Technology

Accessibility Standards," 36 CFR Part 1194;

- x) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609;

- xi) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance;" and xii) Other applicable federal civil rights and nondiscrimination regulations and guidance.

ASSIGNABILITY CLAUSE 49 **U.S.C. chapter 53**

Applicable to all procurements through assignments ("piggybacking")

The Contractor shall comply:

- (1) With the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its subcontract procurements;
- (2) With the applicable U.S. DOT Common Rules; and
- (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, "Third Party Contracting Guidance," to the extent consistent with applicable federal laws, regulations, requirements, and guidance

SAFE OPERATION OF MOTOR VEHICLES

Applicable to ALL procurement types

- (1) **Seat Belt Use**. The Contractor shall implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and
- Including a "Seat Belt Use" provision in each subcontract agreement related to the Award.

- (2) **Distracted Driving, Including Text Messaging While Driving**.

The Contractor shall comply with:

- Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);
- U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and
- The following U.S. DOT Special Provisions pertaining to

Distracted Driving:

- o **Safety**. The Contractor shall adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award;
- o **Recipient Size**. The Contractor shall conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and
- o **Extension of Provision**. The Contractor shall include previous provisions in its subcontracts, and encourage its subcontractors to comply with this Special Provision, and include this Special Provision in each subagreement at each tier supported with federal assistance.

Federal Transit Administration (FTA) Clauses for Construction Contracts as per FTA Master Agreement MA (30) dated March 26, 2025

NTD REPORTING

As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must: (A) facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD); (B) conform to the NTD reporting system and the Uniform System of Accounts and Records; (C) comply with FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 CFR Part 630; (D) report when required to the National Transit Database in accordance with FTA regulation 49 CFR Part 630, "National Transit Database," and applicable FTA instructions: (1) any information relating to a transit asset inventory or condition assessment; (2) any data on assaults on transit workers; (3) any data on fatalities that result from an impact with a bus; and (4) such other information as FTA may require; (E) comply with any other applicable reporting regulations, and requirements; and (F) follow FTA guidance.

TRAFFICKING IN PERSONS

Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended; 22 U.S.C. 7104(g);

Contractor and its subcontractors agree to comply and assures the compliance of each subcontractor, with federal requirements and guidance, including:

1) Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); and the terms of section 4(f) of the Master Agreement (version 34, November 26, 2005 and as may be amended), which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, per U.S. OMB's direction.

2) Contractor and its subcontractors or their employees shall not: (A) engage in severe forms of trafficking in persons during the Contract Term; (B) procure a commercial sex act during the Contract Term; or (C) use forced labor in the performance of the Contract. Contractor shall inform AGENCY immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. AGENCY may terminate this Contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the AGENCY.

FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

If Contractor is a private corporation, partnership, trust, joint-stock company, sole proprietorship or other business association, Contractor must certify that it A) does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and B) was not convicted of the felony criminal violation under any Federal law within the preceding 24 months. Contractor shall submit to City with its Bid/Proposal the Federal Tax Liability and Recent Felony Conviction Certification included as part of the Bid/Proposal Documents and Forms. City will reject as nonresponsive Bids/Proposals or offers that are not accompanied by a completed Federal Tax Liability and Recent Felony Conviction Certification. The Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Applicable to ALL procurement types

In accordance with 2 CFR part 200.216, Contractor and its subcontractors are prohibited from expending funds under this Contract to: procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such

entities). This includes: for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); telecommunications or video surveillance services provided by such entities or using such equipment; and telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

DOMESTIC PREFERENCES FOR PROCUREMENTS **2 CFR 200.322.**

Applicable to ALL procurement types

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.