

REQUEST FOR PROPOSALS

**CONSTRUCTION MANAGEMENT SERVICES (at risk)
for the**

**BAY AREA TRANSPORTATION AUTHORITY
HEADQUARTERS FACILITY AND TRANSFER STATION**



Bay Area Transportation Authority

Bay Area Transportation Authority
3323 Cass Rd.
Traverse City, MI 49864

Issue RFP
Non-Mandatory Pre-Proposal Meeting
Questions/Clarifications
Response to Questions
Proposals Due

March 23, 2021
April 8, 2021 @ 10 am
April 14, 2021
April 16, 2021
April 21, 2021 @ 2:00 pm

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
<i>NOTICE REQUEST FOR PROPOSAL FOR CONSTRUCTION MANAGEMENT (at Risk) SERVICES</i>	iii
1. INVITATION FOR PROPOSAL	1
2. SCOPE OF WORK	5
3. CONTENT OF PROPOSAL	14
4. EVALUATION OF PROPOSALS	18
5. PROPOSAL SUBMISSIONS	20
6. INSTRUCTIONS TO PROPOSERS	22
7. CONTRACT PROVISIONS	31
8. FTA REQUIRED CLAUSES	64
9. FTA REQUIRED CERTIFICATIONS	90

NOTICE**REQUEST FOR PROPOSAL
FOR CONSTRUCTION MANAGEMENT SERVICES (at Risk)**

Sealed proposals for provision of Construction Management Services at Risk (CMAR) will be received in the offices of the Bay Area Transportation Authority (BATA), 3233 Cass Rd., Traverse City, MI 49684 until April 21, 2021 at 2:00 p.m., local time. Project specifications are available from the BATA Purchasing Manager. **A non-mandatory pre-proposal meeting is scheduled for April 8, 2021 from 10:00 am to 11:00 am** in the BATA Conference Room located at 115 Hall Street, Traverse City, MI 49864.

Proposals shall be subject to all applicable State and Federal laws and subject to financial assistance contracts between the BATA Board of Directors and the United States Department of Transportation, under the Federal Transit Act of 1964, as amended, and the Michigan Department of Transportation. The successful contractor will be required to comply with all applicable Equal Employment Opportunity Laws and Regulations. All proposers will be required to certify that they are not on the Comptroller General's list of ineligible contractors.

The BATA Board of Directors hereby notifies all proposers that it will affirmatively insure, in regard to any contract entered into pursuant to this advertisement, that Disadvantaged Business Enterprises will be afforded full opportunity to submit proposals in response to this Request For Proposal and will be not discriminated against on the grounds of race, color, religion, sex, handicap, or national origin in consideration for an award.

The BATA Board of Directors reserves the right to postpone, accept or reject any and all proposals, in whole or in part, for sound, documentable business reasons, subject to the rules and regulations set forth by the Federal Transit Administration and the Michigan Department of Transportation.

No proposal may be withdrawn for at least ninety (90) days after the scheduled closing time of the proposals. An original and five (5) copies of the proposal along with one electronic copy should be submitted to the Executive Director.

Kelly Dunham
Executive Director
(231) 933-5544
dunhamk@bata.net

Bay Area Transportation Authority
3233 Cass Rd.
Traverse City, MI 49864

1.0: INVITATION FOR PROPOSALS

1.1 Invitation

Qualified firms are invited to submit a proposal package as described in Section 3 of the RFP for the provision of Construction Management services for the Bay Area Transportation Authority's (BATA) Garage and Admin Facility.

1.2 Introduction

The BAY AREA TRANSPORTATION AUTHORITY (BATA) is seeking the submission of proposals from a construction management (at risk) firm interested in constructing the new BATA Headquarters Facility and Transfer Station.

With more than 130 employees, BATA provides more than 600,000 annual rides to residents and visitors in Leelanau and Grand Traverse counties. The transit authority offers *Loop* service with dedicated routes and fixed stops, its *Bayline* route with free 15-minute frequency as well as *Link* service that functions as both on-demand and a traditional dial-a-ride service. In addition, BATA introduced programs like *Bike-n-Ride*, *Ski-n-Ride*, and various event transportation, broadening standard service offerings. Visit bata.net for more information.

Fleet – 86 buses of varying sizes

Service Area – 900 sq miles, encompassing all of Grand Traverse and Leelanau Counties

The new HQ facility will house administration, maintenance, and vehicle storage. The bus storage garage will be approximately 80,000 sq ft. and the maintenance facility will house 5-6 maintenance bays. The Transfer Station, located on an adjacent (but not connected) portion of the parcel will accommodate 6 bus slots, a restroom facility, and a "park and ride" parking lot.

1.2.1 BACKGROUND INFORMATION

The Bay Area Transportation Authority BATA is the transit authority that provides a variety of public transportation services for Grand Traverse and Leelanau counties. It is organized and operates under Michigan Public Act 196 of 1986.

BATA operates 12 fixed routes plus 6 demand-response loops and an on-demand service area.

The activities of BATA are overseen by a 7 member board of directors that represent the two county service area.

1.2.2 BATA HEADQUARTERS FACILITY AND TRANSFER STATION DESCRIPTION

The purpose of the BATA garage and Admin facility, as well as a new transit center on site, is to provide enhanced transit access to centers of residential, employment, recreational and

educational opportunities within the two-county service area. The BATA service area is experiencing significant growth and the Authority needs to anticipate the need for more service, exceeding the capacity of the current garage and admin facility.

Estimated completion date of construction is anticipated by December 1, 2022, contingent on approvals from authorities having jurisdiction.

Project Schedule

The following information is a tentative schedule for the BATA HQ Facility and Transfer Station. The schedule is subject to availability of funding, contracting methods, and review times by various agencies and MDOT. Schematic Design start could be delayed by the approval of the PUD through Garfield Township.

Tentative Schedule for Construction of BATA HQ Facility and Transfer Station	
TASK	DATE
Schematic Design	4/19/21 to 6/4/21
Design Development	6/21/21 to 8/13/21
Construction Documents	8/30/21 to 11/19/21
Bidding	11/22/21 to 12/31/21
Award of Contracts	1/3/21 to 1/21/22
Construction	2/7/22 to 4/21/23

Project Organization

Planning for the new headquarters facility and transfer station facility is being done by BATA in close coordination with Garfield Township, the Traverse City Housing Commission, Grand Traverse County, and the Michigan Department of Transportation. Although BATA is responsible for project development, the land use requires PUD approval from Garfield Township and the overall project requires coordination with other significant entities. The selected CMAR will report directly to BATA.

1.3 Plan of Activities

Pre-Proposal Conference: A non-mandatory pre-proposal meeting will be held at BATA’s Hall Street Transfer Station at 115 Hall Street, Traverse City, MI 49864 at 10:00 a.m. local time on April 8, 2021 to further clarify the scope of the proposed project. BATA staff and consultants will be present to give a project overview and answer any questions related to the project.

“Attendance at this meeting is not a prerequisite but is highly advised.”

1.4 Budget and Funding

The headquarters facility and transfer station have a total budget of approximately \$23,000,000 based on a late Fall of 2021 start of construction. The above project total does include A&E and CMAR fees as well as a construction contingency. Funding for this project will come from Federal (80%) and State (20%) capital grants as well as local funds.

1.5 Schedule

A detailed schedule for the construction of the headquarters facility and transfer station is to be developed by the Construction Team, comprised of the Construction Manager, Architect and the BATA Project Manager Spring 2021.

1.6 Professional Contracts

The Bay Area Transportation Authority (BATA) will use a modified AIA A133 CMC contract for Construction Manager services. In addition, all or part of the proposal submitted in response to this RFP by the Construction Management firm will include clauses in Sections 6-7-8-9 will be incorporated into the contract.

Based on the architectural program, the BATA Board of Directors retained the architectural team of Progressive AE to perform the programming and schematic design.

1.7 RFP Schedule

Issue RFP	March 23, 2021
Non-Mandatory Pre-Proposal Meeting	April 8, 2021 @ 10 am
Questions/Clarifications	April 14, 2021
Response to Questions	April 16, 2021
Proposals Due	April 21, 2021 @ 2:00 pm

2.0 SCOPE OF WORK

2.1 Required CMAR Services

The CMAR is being selected prior to construction in order to provide BATA and its Design Team with expertise and experience that will assist in Project decision making, and to ensure that procedures are implemented to aggressively manage the construction costs and schedule. The design must allow for economical and efficient methods for construction, and construction must be phased to maintain a high level of service to the public. BATA seeks the CMAR who can best provide the above services, manage a technically complex project, and coordinate the multiple disciplines and tasks of this Project.

The services requested of the CMAR will be provided in two phases, generally described below:

- (1) **Preconstruction Services.** Provide consultation and work with BATA and its Design and Engineering Team during the planning and design of the Project including, but not limited to, constructability reviews, value engineering, scheduling, estimating costs, and subcontracting services.
- (2) **Construction Services.** Management of Project bidding and completion of the construction work within the Guaranteed Maximum Price (GMP) and Project schedule including, but not limited to, value engineering, scheduling, estimating, subcontracting services, coordinate and manage the building process and consultation and work with the Design and Engineering Team and BATA. **The GMP will be approved and agreed on or after the various bid packages have been received.**

The Construction Manager and the Construction Manager's firm will not be permitted to perform any construction services directly.

The scope of services anticipated to be provided by the CMAR are more particularly summarized below.

2.2 Preconstruction Services

- 2.2.1 Preconstruction services shall be provided under the terms of the Contract executed by BATA and the successful Proposer, which Contract shall include the Standard Form of Agreement between Owner and Construction Manager - AIA A133 CMC contract, as modified by BATA. The Proposer shall complete the Proposal Form and submit it as part of its response to this RFP. BATA will evaluate Proposals submitted by the due time and date listed on page 1 of this RFP in accordance with Section 2 of this RFP.
- 2.2.2 The scope of preconstruction services under the Contract are identified by task order number below. However, it is anticipated that the final description of preconstruction services will be negotiated prior to execution of the Contract.

**TASK
ORDER
NUMBER**

The Contractor shall provide a dedicated Project Manager and support staff beginning with Notice to Proceed (NTP) for Preconstruction Phase Services and continuing throughout the Project as necessary to complete all Preconstruction Phase Services. The Contractor's Project Manager will be available to the Project as his/her first priority and allow enough time to meet those tasks required in the Contract Documents.

The Project Manager's responsibilities include, but are not limited to:

- Ensure that FTA Guidance of Circular 4220.1f, Construction Project Management Handbook, and elsewhere as applicable is followed.
- Attendance and participation at meetings
- Public involvement events with the media including BATA requested interviews
- Seeking out qualified minority and woman owned businesses and assisting BATA consultants with DBE reporting
- Compliance with Buy America requirements
- Preparation of a subcontracting plan
- Cost estimating
- Participation in Design Team collaborative discussions and problem- solving sessions
- Research and development of documents and materials for BATA on topics specific to the risks and issues on the Project
- Review and make recommendations to the owner regarding construction bid solicitation documents.
- Participate in preparation and review of third-party agreements (including utilities, local agency, and others), as needed
- Participate in the preparation of Project environmental and construction permits
- Schedule preparation and Work sequencing
- Related Project management activities as directed by BATA
- Other duties as required by the owner.

1

Project Bid-Item List and Construction-Cost Estimates - Prior to the submittal of the proposed GMP by the Contractor, the Contractor shall prepare and submit complete bid-item lists for the Work Package to BATA for their use. The Contractor shall develop these

bid-item lists and estimates in conformance with BATA procedures or a format established and provided by the Design Team.

After the bid-item list and work items within each bid item has been established, the Contractor shall develop a detailed cost estimate. All cost estimates shall be open-book estimates. The Contractor shall submit quantity calculations and unit-cost justification for all bid items. The Contractor shall provide the source of construction production rates used to determine the unit costs for the bid items. In the event that unique items of Work are required, the Contractor shall provide a list of the Work items, along with justification for why each item of Work is required.

The Contractor shall submit an MS Excel spreadsheet with all construction cost bid items broken out by the major work categories, including, the Garage/Admin Facility and all of its components and systems, Support Facilities, site work and systems in a format agreed to by the Design Team. The Contractor's estimates shall be in the agreed-to format to facilitate quantity and reconciliation. The Project construction-cost estimate shall be independently prepared by the Contractor and shall reflect unit-cost prices that are current, specific to the location of the Project, and related to the complexity of the Project.

2 Submit written "course of construction" plan to BATA for review and approval, which plan shall address proposed construction phasing, staging, and field office needs; parking requirements during construction; construction equipment storage and use of public roadways; coordination of work with public, including utility disruptions; protection of private and public properties; dirt/debris mitigation; storm water drainage management; temporary facilities; construction zone pedestrian and vehicular traffic management, including signage, noise, and vibration control; work hours, including number of shifts and weekends; temporary road closures or detours; emergency vehicle provisions; maintenance of access to all properties; public and worker safety protections; construction restrictions during special events; and security and maintenance of construction work zones. Revise and resubmit the plan as necessary.

3 Review 70% final design and construction drawings and specifications, identify revisions to improve clarity for bidding, and propose revisions that reduce construction costs and time of performance. Provide value engineering, constructability, and material availability review.

Constructability Reviews and Recommendations - The Contractor (CMAR) shall provide the staff necessary to work collaboratively with the Design Team to answer questions and

provide recommendations on constructability. The Contractor shall have 14 calendar days following receipt of each Design Team submittal to provide written comments and red-lined drawings to BATA. The comments and red-line drawings should focus on substantive concerns, issues, and clarifications to improve the quality of the drawings and specifications. The purpose of the reviews is to reduce risk, schedule and/or cost of the Project and to improve the Project to meet the goals of BATA. BATA anticipates that both the Contractors' Project Manager and the personnel performing constructability review services will participate in the development of the review comments.

Review all final construction documents, identify revisions that improve clarity for bidding, reduce construction costs and time of performance, and eliminate areas of conflict or overlapping in work to be performed by subcontractors.

Identify any long lead items in a letter to BATA that should be procured prior to completion of 100% final design so that the milestone schedule is met.

5 Work with BATA to finalize a contracting plan for accomplishment of all construction. Recommend division of the work to facilitate bidding and award of trade contracts. Recommend which work, if any, should be procured through value-based competitive selection, in lieu of low bid. Identify the plan to manage any contractor who is not performing in accordance with the Project's requirements for budget control, on time schedule performance, safety, and quality control.

6 (a) **Project Scheduling** - The Contractor shall develop and maintain the Project's Baseline CMAR Schedule (including Preconstruction Phase tasks, design, and construction activities). The schedule will include Critical Path elements of the Work including design schedule and deliverables, overall quality assurance activities for Design and Construction, right-of-way, third-party agreements, in-water work windows, permitting, Early Work Packages, construction activities, utility relocations, construction stages, lane closures, and shifts. The Contractor will consult with the Design Team and BATA for design and permitting activities. The Project schedule will be updated monthly to incorporate actual dates and percent complete of ongoing activities. BATA shall have access to the Microsoft Project files for the base and updated schedules at all times.

(b) **Base Schedule** - The Contractor shall provide the base schedule for the entire Project duration within 45 calendar days of NTP for Preconstruction Phase Services. BATA will review and

comment on the base schedule within 10 calendar days of submission.

(c) **Monthly Updates and Schedule Review** - The Contractor shall meet **monthly** with other members of the Design Team to review these schedules and discuss tasks, percentages of completion, changes in sequences to optimize Work, construction windows, and any other possible options for reducing schedule and cost impacts. Monthly CPM schedules shall be provided to BATA for approval in color hard copy (four hard copies) and electronic formats (Adobe PDF and Microsoft Project format).

- 7 Attend and participate in public meetings, as requested by BATA, to assist in resolution of any Project-related issues.
- 8 Prepare and submit to BATA, for review, construction-cost estimates at the Schematic Design Phase, the Design Development Phase, and when the design and construction documents are 70% complete and 100% complete. If a preliminary construction-cost estimate is exceeded, identify feasible cost-reducing options, including projected cost savings offset with any additional design costs, to bring construction costs for the line segment within the estimate. Revise and resubmit the estimates as necessary.
- 9 Prepare and submit to BATA, for review and approval, a safety plan in compliance with current OSHA and MDOT requirements for use during construction. Revise and resubmit plan as necessary.
- 10 Prepare and submit to BATA, for review and approval, a quality control plan in compliance with MDOT, Garfield Township and Grand Traverse County field quality control inspection requirements and **material testing QA/QC** procedures for use during construction. Revise and resubmit plan as necessary.
- 11 Prepare and submit to BATA, for review and approval, a plan to handle unanticipated hazardous materials that may be encountered during construction. Revise and resubmit plan as necessary.
- 12 Prepare and submit an erosion control plan to BATA, for review and approval, to manage storm water runoff and maintain water quality during construction in accordance with the appropriate jurisdictional criteria. Plans shall be prepared under the supervision of and stamped by a licensed professional engineer of the State of Michigan. Revise and resubmit plan as necessary.
- 13 Work with BATA as requested to prepare a safety certification plan for use during and for close out of construction.

- 14 Once bid packages for the various trades have been received and evaluated, the CMAR will prepare and submit a construction cost estimate that, when agreed to by BATA, will become the Guaranteed Maximum Price (GMP). GMP shall include the total sum of the preconstruction fee, the CMAR fee, general conditions and the Cost of the Work as more fully described in the Standard Form.

The CMAR shall meet with BATA and Design Team to review the GMP proposal and the written statement of its basis. If BATA or Design Team discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CMAR, who shall make appropriate adjustments to the GMP proposal, its basis, or both.

If the initial GMP construction cost estimate appears to be exceeding BATA's established construction budget, the Contractor shall notify BATA accordingly and propose how to complete the work within budget.

If BATA and the CMAR cannot agree on a GMP, BATA reserves the right to terminate the CMAR contract and procure the work in an alternative manner as BATA deems appropriate.

In the event of early termination, BATA will compensate the CMAR contractor based upon work performed prior to the termination.

2.3 Construction Services

Construction phase services will be provided under the terms of the Contract executed by BATA and the successful Proposer, which Contract shall include Standard Form of Agreement between Owner and Construction Manager AIA A133 CMC and the General Conditions of the Contract for Construction – AIA Document 201, as modified by BATA. The scope of the CMAR construction services will include the following items, many of which will be started in the preconstruction phase and executed in the construction phase:

- (1) Solicit and publicly conduct subcontractor bidding for all construction work in accordance with all applicable federal and state public bidding requirements.
- (2) Maintain a qualified, full-time Superintendent with needed staff at the job site to coordinate and provide direction of the work. Include an explanation of who will manage quality control and Project scheduling.
- (3) Maintain the critical path schedule and keep BATA and the Design Team fully advised of work progress status. Maintain and update construction phasing as the work progresses according to the adopted Project Management Plan (PMP)
- (4) Develop and monitor an effective system for Project cost control; provide monthly reports of actual costs and work progress as compared to cost estimates and scheduled work progress. Meet with the Project Team bi-weekly to manage change orders, RFI's, etc.

Provide supporting information for any variances as requested by BATA and the Design Team; maintain cost accounting records, provide Owner access to these records, and preserve for at least three years after final payment.

- (5) Establish an effective quality control plan for all construction, and inspect the work as it is being performed to assure that materials furnished and quality of work performed are in accordance with the plan and construction documents.
 - (a) **Project Records** - The Contractor shall maintain Project Records so that they include this Contract and all Project reporting, test results, survey records, engineering computations, assumptions, working drawings, meeting minutes, correspondence, memos, transmittals, notes, and other written materials generated in the course of performing the Work identified in the Contract Documents for the Project. The Contractor's compiling of Project Records shall be an ongoing task, commencing upon receipt of NTP for Preconstruction Phase Services from BATA, incorporating documents as they are generated, and continuing through completion and Final Acceptance. Project Records shall be available for review by BATA, at the Contractor's office, at any time. Project Records shall be submitted to BATA within 30 calendar days of request, or 30 calendar days following completion and acceptance of the Work by BATA.
- (6) Establish job-site safety program.
- (7) Perform inspections during construction.
- (8) Strict adherence to Davis-Bacon requirements.
- (9) Require compliance with Buy America regulations for all procurements.
- (10) Establish programs for maintaining current job-site records, labor relations, and DBE participation, as a minimum.
- (11) Work with BATA, MDOT, and the Garfield Township to obtain permits for contractor-designed portions of the work.
- (12) Review and process all applications for payment by sub-contractors and material suppliers in accordance with the terms of their contract. Review and resolve, on behalf of BATA, all subcontractors' and/or material suppliers' requests for additional costs.
- (13) Schedule and conduct job meetings to ensure orderly progress of the Work. Prepare and distribute records of the meetings to meeting attendees, BATA, and the Design Team.
- (14) Resolve, in connection with BATA, all disputes that may arise between subcontractors and/or suppliers as a result of the construction.
- (15) As construction is completed, the CMAR shall provide the following close-out services:
 - (a) Perform the necessary work to satisfy BATA that the Garage/Admin Facility operates as designed before the facility is deemed substantially complete. This service is known as commissioning.
 - (b) Convene and conduct Final Inspection in conjunction with A/E firm.
 - (c) Coordinate and expedite the submittal of record documents.
 - (d) Organize and index operations and maintenance manuals.

- (e) Provide all required training of BATA personnel in the operation of installed equipment and systems.
- (f) Coordinate and Manage As-built Documentation Activities.
- (g) Assist in securing occupancy permits.
- (h) Provide continuing change order review and processing services.
- (i) Prepare final report of all construction costs. Assist in BATA audit of final cost report and all supporting documentation. Provide lien waivers from all subcontractors and material suppliers.

2.4 Special Requirements

Prior to completion of the Construction Documents used for bidding, the CMAR shall contact potential subcontractors and material suppliers to encourage their interest in bidding on the Work. Except as otherwise provided by the Contract Documents, the CMAR shall subcontract the Work to subcontractors other than the CMAR, its subsidiaries, or other affiliates. Further, the CMAR shall comply with all applicable federal and state bidding requirements for the solicitation of bids, including the encouragement of DBE participation in bidding on the Work.

It is the objective of BATA to obtain the best value for the funds expended. Competition is the preferred method of assuring the best value for the least cost. Unless specifically waived in writing by BATA, the selection of all subcontractors shall be made by competitive bid or quotes in a manner that will not encourage favoritism or substantially diminish competition. The CMAR will be expected to publicly conduct the sub-bidding of all construction work including, where applicable, developing a subcontractor prequalification process for critical items of work. This will include the following:

- (1) All bids for work valued at more than \$5,000 are required to be sealed, written, and submitted to a specific location at a specific time. A BATA representative will be present during bid openings. The CMAR shall provide an analysis of bids to BATA.
- (2) Solicitations for bids shall be advertised at least ten (10) business days in advance of the bid opening. Solicitations shall be advertised on the BATA website.
- (3) **The CMAR shall attempt to obtain a minimum three (3) bids for each package of work bid.**

The award of subcontracts by the CMAR shall be subject to the following:

- (1) BATA concurrence in the award of subcontracts is required, with some specific exemptions as outline in the Contract.
- (2) Advance approval by BATA is required for any sole-source subcontract awards.

The CMAR shall pass all flow-through federal and state regulations onto the subcontractors. At a minimum, all workers on this Project shall be paid in accordance with the provisions of the Davis-Bacon Act.

3.0: CONTENT OF PROPOSAL

3.1 Cover Letter

The proposal must include a cover letter that identifies the proposing firm/organization, mailing address, contact person, and telephone number. The cover letter must acknowledge the receipt of all addenda issued to the Request For Proposal (RFP), and be signed by the individual who is authorized to negotiate and execute a contract on behalf of the proposing firm/organization.

3.2 Qualifications of Respondents

The evaluation of the proposals and subsequent contract award shall be based on considerations of the firm's ability to perform the services described herein. As a method of selection and award, major consideration shall be given (but not limited) to:

1. The successful completion of previous government projects comparable in design, scope, and complexity by the Construction Manager to be assigned to this project. Provide owner contact name and phone number for each project.
2. The resumes and experience of the key staff assigned to the project.
3. A list of owners, architects and engineers for whom the Construction Manager has provided construction management services. (Name, firm, email address and telephone number.) The specific dollar amount of the construction project should also be listed for comparison purposes.
4. The demonstrated ability of the Construction Manager to work cooperatively with owners and architects throughout the project to display leadership and initiative in performing tasks, and to act in harmony with the team as each performs his/her designated contractual responsibilities.
5. The demonstration of successful management systems for the planning, organizing and monitoring of construction projects.
6. The Construction Manager's knowledge and experience in the use of Value Engineering.
7. The ability of the Construction Manager to procure bidders on all phases of the work, to deliver materials and equipment on schedule, and to maintain maximum productivity and quality workmanship. Provide references of contractors with whom Construction Manager worked on comparable projects.
8. The firm's willingness to encourage and solicit participation of qualified minority and women contractors consistent with the principle of utilizing the most highly qualified and competitive firms, the firms affirmative action plan concerning its work force and procurement practices, and the firms record on policies of non-discrimination on the basis of race, creed, color, sex, or national origin in its employment or procurement practices.
9. The Construction Manager's experience in taking corrective action when deviations from standards of quality, time and budget have been identified. Include examples with your proposal.

10. The Construction Manager's experience in producing reports and other communication devices necessary to keep the Owner aware of project status at all times. Samples must be provided.

3.3 Proposal Format

1. Construction Manager's submit on 8 1/2" x 11" softbound sheets with a maximum of 25 – double sided pages.
2. Set forth the approach to fulfilling all the requirements listed herein.
3. Provide other materials documenting the Construction Manager's experience, requested references and samples.
4. Proposal contents are to follow the outline from under "Criteria for evaluation."
5. A Cost Proposal Form **will be provided in a sealed envelope**. The cost proposal should be filled out with the following items to be included:
 - ❑ Fixed Fee (expressed in a dollar amount and a percentage). This amount shall be divided into overhead and profit.
 - ❑ Staff allowances (by category – Project Director, Project Mgr., Project Superintendent, etc. showing total hours and total dollars).
 - ❑ General Conditions (list categories and costs).

A) Provide an overhead rate on direct labor,

 - 1) Provide an audited copy of overhead rates for the most recent fiscal year.
6. Submit one original and five copies and one electronic copy.

3.4 DBE Information

Information on any Disadvantaged Business Enterprise (DBE) participation shall be submitted. BATA has established a DBE Participation Policy Statement and although no DBE participation goal is being mandated for the CMAR services based on local availability, DBE participation is encouraged wherever it is appropriate, cost effective and meets the goals of the prime contractor. Specific information regarding the policy and goals is provided in Section 6: Instructions to Proposers, 6.27. If DBE services are utilized, that information shall include, at a minimum,;

- A description of any DBE firm(s) and the work it (they) will perform.
- Evidence of the firm's DBE certification.
- Estimated value of services to be performed and/or materials to be provided by DBE firm(s) under the proposal.

3.5 Firm Certification

The following items shall be completed and submitted as part of the proposal. Compliance with these requirements is mandatory for contract award.

- DBE Participation Form
- Certification of Lower-Tier Participants (Subcontractors) Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion
- Certification of Primary Contractor Regarding Debarment, Suspension, and Other Responsibility Matters
- Certification of Restrictions on Lobbying
- Buy America Certification

4.0: EVALUATION OF PROPOSALS

4.1 Interview and Selection Process

The Selection Committee will be comprised of BATA's executive director and BATA staff. It may also include technical consultants. They will review each proposal and select the most qualified ones for further consideration. The initial selection criteria will include, but not be limited to, such factors as number and level of experience of staff assigned to this project, methodology of managing the project, references of projects of similar size and complexity.

BATA reserves the right to conduct interviews with those proposers in a competitive range in person, by phone or by video conference. The original scoring of the non-price criteria may be modified based on the results of the interview.

Any materials or documents produced as a result of this agreement become the exclusive property of The Bay Area Transportation Authority. BATA retains the rights to use or duplicate the information for the project. Information submitted is subject to the Michigan Freedom of Information Act, and may not be held in confidence after the proposals are opened.

4.2 Criteria for Evaluation

The proposals will be evaluated with regard to the following factors. They are presented in their relative order of importance by section. No points will be awarded for the certifications but failure to sign and return the certifications may lead to disqualification. Price is relatively less important than the other criteria as a whole and BATA reserves the right to award to other than the lowest price proposal.

1. Capacity to Perform
 - A. Experience of the Firm
 - B. Depth of the Firm
 - C. Similar type of projects
 - D. Similar size of projects
 - E. Understanding of Project
 - F. Knowledge of Building / Project Type
 - G. Interest/Commitment
2. Management
 - A. Organizational Concepts
 - B. Methodology of Managing the Project
 - C. Administrative Ability
 - D. Local Knowledge and Experience
 - E. Non-Discrimination Methods
 - F. Knowledge of Buy America requirements
 - G. Knowledge of Building type
3. Proposal Price
 - A. Price will be evaluated using the following formula:
Lowest price proposal / price being evaluated * available points

4. Previous Work
 - A. References

5. Firm Certifications (Must all be completed)

DBE PARTICIPATION FORM
CERTIFICATION OF RESTRICTION ON LOBBYING
CERTIFICATION OF LOWER TIER PARTICIPATION
CERTIFICATION OF DEBARMENT (PRIMARY CONTRACTOR)
CERTIFICATION OF BUY AMERICA

- A) If any work is to be subcontracted to another firm(s), the proposal must include the above firm and staff qualification information for each subcontractor, a description of the services the firm(s) will be performing and estimated fees for their services.

5.0: PROPOSAL SUBMISSIONS

BATA will receive sealed proposals until April 21, at 2:00pm, local time. Proposals shall be submitted to:

Kelly Dunham, Executive Director
Bay Area Transportation Authority
3233 Cass Rd.
Traverse City, MI 49684

One (1) original and five (5) copies of the proposal are to be submitted. In addition, an electronic copy of the proposal (Thumb Drive) shall also be submitted. Proposers should complete the enclosed "Sealed Proposal" label and attach it to the outside of the envelope containing the financial proposal. Attachment C contains a mailing label for the project. BATA assumes no responsibility for the premature opening of sealed proposals that do not have this label attached. **Proposals must be accompanied by a signed statement acknowledging the receipt of any addenda issued to this RFP.**

If the proposal is submitted by mail, it shall be mailed a minimum of three (3) days prior to the submittal date. The proposal envelope shall be postmarked by the U.S. Postal Service or other mail service. Postage meter dates are not acceptable. Proposals mailed less than three (3) days prior to the submittal date and received after the submittal deadline will not be accepted.

It is anticipated that recommendations on contract awards will be presented to the BATA Board of Directors in May, 2021. Board action authorizing contracts will be requested at that time, with the execution of agreements as soon as possible thereafter. BATA reserves the right to modify the schedule described below, or to withdraw this RFP, at any time without prior notice. BATA also makes no representations that any agreement will be awarded to any proposer responding to this RFP. BATA expressly reserves the right to reject any and all proposals for sound, documentable business reasons or to waive any irregularity or informality in any proposal and to be the sole judge of the suitability of the services to be rendered.

All issues related to the submission of the proposal, price proposal, completion of forms, evaluation procedures, contracts, etc., shall be directed to:

Kelly Dunham, Executive Director
Bay Area Transportation Authority
dunhamk@bata.net

All questions and answers will be posted on BATA's website at www.bata.net.

6.0: INSTRUCTIONS TO PROPOSERS
CONSTRUCTION - RFP

1) FUNDING

This Project will be funded with the assistance of capital improvement grants from the Federal Transit Administration and the Michigan Department of Transportation (MDOT). The successful bidder will be required to have an MDOT approved third party contract with BATA. Project start-up will be subject to grant availability.

2) PROJECT BUDGET

The budget for this Project will be funded through financial assistance grants from the Federal Transit Administration (FTA) and Michigan Department of Transportation (MDOT). The total Project budget will be determined by the final negotiated price between BATA and the successful bidder.

3) PRE-PROPOSAL CONFERENCE

A Non-Mandatory Pre-Proposal Conference will be held for all interested bidders on **April 8, 2021 at 10:00 a.m. at the BATA's Hall Street Transfer Station located at 115 Hall Street, Traverse City, MI 49864.** BATA reserves the right to postpone answers to any questions raised at this meeting until a later date. Any oral explanations provided by BATA during this meeting will not be binding upon BATA until they are reduced to a written form by BATA and given to all interested bidders. Bidders seeking a written response by BATA to their questions at the Pre-Proposal Conference are requested to submit their questions in writing to BATA in advance. BATA will make every effort available to respond at the Pre-Proposal Conference. **Attendance at the Conference is not mandatory but strongly advised.**

4) TYPE OF CONTRACT

The Contract for this Project shall be a firm fixed price type.

5) PROJECT NUMBER(S)

All bidders and Contractors will include the BATA Project Number in all correspondence with BATA and with the FTA. The FTA Project Title for this RFP is **BATA's HQ and Admin Facility.**

6) USE OF "BAY AREA TRANSPORTATION AUTHORITY" NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS

BATA reserves the right to review and approve any advertising copy related to this Project in any way prior to publication. The successful bidder will not allow such copy to be published in their advertisements or public relations programs until submitting such copy and receiving prior written approval from BATA. The successful bidder agrees that published information relating to this Project will be factual and in no way imply that BATA endorses the successful bidder's firm, service or product.

7) INTENT OF SPECIFICATIONS

It is the intent of these specifications to provide completed Project of substantial and durable construction in all respects, which will be most suitable and advantageous for BATA. Experimental or unproven equipment, materials or design will not be accepted without prior review and written acceptance by BATA.

8) APPROVED EQUALS AND DEVIATIONS

All Proposals must be in strict compliance with the requirements and provisions of these specifications, including the provisions herein regarding "approvals", "approved equals", and "deviations". Where a feature, component or item is specified by brand name in these specifications, the words "or approved equal" will apply. Where the approval of BATA is specifically required by these specifications in connection with a particular feature, or if the bidder proposes to submit a proposal containing "approved equals" or "deviations" from specific requirements of these specifications, the bidder must obtain such approval, confirmed in writing, prior to the date for the receipt of proposals. With respect to "approved equals" or "deviations", the details of same and the reasons and justifications therefore must be submitted to BATA, including a statement whether the bidder has previously furnished or offered to furnish the item in question, is herein specified. Proposals may be submitted containing such "approvals", "approved equals", or "deviations", as are specifically approved by BATA, confirmed in writing, prior to the date for receipt of proposals. Each proposal must be accompanied by documentation regarding any such approvals granted by BATA for the proposal. Notice of any such approvals required by and/or granted to a bidder shall be furnished by BATA to other prospective bidders prior to the date for receipt of proposals. Any unapproved deviations, exceptions, substitutions, alternates, or conditional qualifications contained in a proposal may be cause for its rejection. The decision of BATA, as represented by the Executive Director, shall be final with respect to whether any proposed deviations from the specifications are acceptable. It should be understood that specifying a brand name, components, and/or equipment in this specification shall not relieve the supplier from his responsibility to produce the product in accordance with the performance warranty and contractual requirements. The supplier is responsible for notifying BATA of any inappropriate brand name, component, and/or equipment that may be called for in the specifications, and to propose a suitable substitute for consideration.

9) PROTEST PROCEDURES

Contractors wishing to protest procurement decisions or processes must submit the protest in writing to the BATA director at the 3233 Cass Road, Traverse City, MI 49684. Protests about solicitation specifications or processes must be received 10 business days before the solicitation due date. Protests received after the due date, but before award must be received before 5 business days after the due date. Post award protests must be received by BATA no later than 5 business days after the award decision.

The protestor must qualify as an "interested party" in the procurement. An "interested party" is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the procurement at issue.

The written protest must identify the protesting party, clearly define the decision or process being protested and the reason(s) for the protest, and the relief desired of BATA's procurement award.

BATA reserves the right to not accept solicitations, postpone or extend the solicitation due date, cancel any award or re-solicit based on the protest received. BATA's Executive Director or her/his designee will review the written protest and provide a written decision to the protestor within 10 business days of receiving the protest.

The protestor can appeal the BATA Executive Director's or her/his designee's decisions to the BATA Board. That appeal must be filed with BATA's Executive Director or her/his designee within 5 business days of the Executive Director's or her/his designee's decision. The BATA Board's decision on the appeal will be final.

Protestors can appeal the BATA Board's decision to the FTA Region V Office, 200 West Adams Street, Suite 320, Chicago, Illinois 60606. Phone: (312) 353-2789' Fax (312)886-0351.

The following terms, conditions and appeal procedures will apply:

- (a) BATA reserves the right to postpone the bid opening or receipt of proposals for its own convenience.
- (b) Changes to the specifications will be made by addendum only.
- (c) Prime Contractors and subcontractors may make appointments to discuss the Project specifications. This, however, does not relieve them from the written documented requests required by paragraphs (d) and (f), following.
- (d) Requests for approved equals, clarification of specifications, and protest of specifications must be received by BATA in writing not less than ten (10) working days before the date of the scheduled bid opening or closing date for receipt of proposals. Any request for an approved equal or protest of the specifications must be fully supported with technical data, test results or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.
- (e) BATA may open bids, receive proposals and award a Contract for a Project while a protest is pending final disposition when the BATA Executive Director determines that:

*The items to be procured are urgently required;

*Delivery or performance will be unduly delayed by failure to make an award promptly; or,

*Failure to make prompt award will otherwise cause undue harm to BATA or the Federal Government.

- (f) The provisions of Chapter V of FTA Circular 4220.1F. (11/01/2008), are hereby incorporated and made part of the rules of BATA. Protests to the FTA by a protester must be made in accordance with FTA Circular 4220.1F FTA will only consider a protest that alleges failure of BATA to have a written protest procedure or failure to follow such procedure. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal regulation.

Any appeal or protest may be withdrawn at any time.

10) SUBMISSION OF PROPOSALS

Sealed proposals will be accepted until April 21, 2021 at 2:00 p.m., local time. They shall be submitted to:

Kelly Dunham
Executive Director
Bay Area Transportation Authority
3233 Cass Rd.
Traverse City, MI 49864

Proposals submitted to BATA shall include one (1) original and five (5) copies along with one electronic copy.

11) SEALED PROPOSAL LABEL

The bidder should complete the enclosed "Sealed Proposal" label and attached it to the envelope containing the bid or proposal. BATA assumes no responsibility for the premature opening of sealed bids or proposals which do not have this label attached to the outside of the envelope.

12) MAILING BIDS/PROPOSALS

Bids or proposals submitted by mail shall be mailed a minimum of three (3) days prior to the bid opening date or date scheduled for receipt of proposals. Postmarks by the U.S. Postal Service or other mail delivery service is required. Postage meter dates are not acceptable. Bids or proposals which are not mailed in a timely manner and received after the scheduled bid opening or proposal submittal date will not be accepted.

13) DURATION OF OFFER

All bids or proposals shall remain in effect for a minimum of 90 days from the bid opening date or scheduled date for receipt of proposals. Offers that allow less than 90 days for acceptance by BATA will be considered non-responsive and will be rejected.

14) PROPOSAL PRICE

(a) Proposal prices shall be submitted in the Cost Proposal Form. Prices submitted in any other form may be considered non-responsive and may be rejected.

(b) Proposal prices shall be based on F.O.B. BATA, 3233 Cass Rd., Traverse City, MI 49864.

The price stated in any proposal submitted shall include all items of labor, materials, equipment, tools and other costs necessary to fully complete and deliver this Project pursuant to the specifications. It is the intention of these specifications to provide and require a complete Project of the type prescribed. Any item or items omitted from such specifications which are clearly necessary for the completion of such Project and its appurtenances shall be considered a portion of such Project although not directly specified or called for in these specifications.

15) TAX EXEMPTION

BATA is exempt from payment of all Federal, State, and local taxes in connection with this Project. **This provision does not relieve the Contractor from the responsibility to pay all applicable taxes for goods, services, and labor acquired in the performance of this Project.**

16) DISCOUNTS

Prompt payment discounts will not be considered in the evaluation of proposals or bids. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the bidder. As an alternative to offering a prompt payment discount in conjunction with the offer, bidders awarded Contracts may include prompt payment discounts on individual invoices.

17) PAYMENT TERMS

[see #34]

18) PROJECT COMPLETION DATE **NOT APPLICABLE**

Bidders shall state in the bid or proposal the earliest possible date offered for completion of the Project. The date cannot exceed 540 calendar days from the date of the Notice to Proceed with the Project.

19) LATE PROPOSALS OR WITHDRAWAL OF PROPOSALS

a) Any proposal received at the BATA offices designated in the solicitation after the time specified for receipt of proposals will not be considered and will be returned to the bidder unopened.

A proposal may be withdrawn in person by the bidder or their authorized representative, provided their identity is made known and a receipt is signed for the proposal, and only if the withdrawal is made prior to the time specified for receipt of proposals.

20) DETERMINATION OF SUCCESSFUL PROPOSER

In determining the successful proposer, consideration is given to the proposer's qualification, content of proposal, and financial proposal as described in the evaluation criteria. The Contract award for this Project will be made to the proposer making the best and most advantageous offer to BATA, price considered.

21) BIDDER QUALIFICATIONS

In order to be eligible for award, bidders must be responsive and responsible.

(a) Responsive offers are those complying in all material aspects of the solicitation, both as to the method and timeliness of submission and as to the substance of the resulting Contract. Bids or proposals which do not comply with all the terms and conditions of the solicitation may be rejected as non-responsive.

(b) Responsible bidders are those prospective Contractors who, at a minimum, must:

- 1) Have adequate financial resources, as required during performance of the Contract.
- 2) Are able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
- 3) Have a satisfactory record of past performance.
- 4) Have necessary technical capability to perform.
- 5) Provide evidence satisfactory to BATA that the bidder will comply with the DBE requirements.
- 6) Certify that they are not on the U.S. Comptroller General's list of ineligible Contractors.
- 7) Are qualified as a manufacturer or regular dealer of the items being offered.
- 8) Are otherwise qualified and eligible to receive an award under applicable laws and regulations.

All prospective bidders may be requested to submit written evidence verifying that they meet the minimum criteria necessary to be determined a responsible Contractor. Refusal to provide requested information may cause rejection of the bid or proposal.

22) ACCEPTANCE OF PROPOSAL

Each proposal shall be submitted with the understanding that the acceptance in writing by BATA of the offer to furnish any or all goods or services described therein shall bind the bidder on his part to furnish and deliver at the proposal price, in accordance with the conditions of said accepted proposal and specifications

23) WITHHOLDING AWARD

This solicitation for bids or proposals does not commit BATA to award a contract, pay any costs incurred in preparation of bid or proposals in response to this solicitation, or to procure or contract for good or services. Bidder shall be responsible for all costs incurred as part of their participation in the pre-award process.

24) PROPOSAL ACCEPTANCE, REJECTION, AND POSTPONEMENT

BATA reserves the rights to postpone, accept, or reject any and all proposals in whole or in part, on such basis as the BATA Board of Directors identifies sound, documentable business reasons, subject to the rules and regulations set forth by the FTA and MDOT. The BATA also reserves the right to accept an original offer or proposal without negotiation or without calling for a "best and final" offer.

25) MDOT/FTA CONCURRENCE FOR CONTRACT AWARD

The award of a Contract for this Project will be subject to review and approval by MDOT.

26) SINGLE BID RESPONSE

If only one (1) bid is received in response to the Invitation for Bids, a detailed cost/price proposal may be requested of the single bidder. A cost/price analysis and evaluation and/or audit may be performed of the cost/price proposal in order to determine if the price is fair and reasonable.

27) DBE PARTICIPATION

In connection with the performance of this Contract, the successful bidder agrees to cooperate with BATA in meeting its commitments and goals with regard to maximum utilization of Disadvantaged Business Enterprises (DBE). The policy and obligations for maximum utilization of DBE's are herein set forth:

(a) Policy - It is the policy of the Department of Transportation that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or apart with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR, Part 26 apply to this Agreement.

(b) DBE Obligation - BATA or its Contractor agrees to ensure that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, BATA or its Contractors shall take all necessary and reasonable steps in accordance with 49 CF, Part 26, to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and to perform contracts. BATA and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

Requirements and goals for Disadvantaged Business Enterprise participation in this Project are as follows:

A minimum of **zero (0) %** of the total contract price, as awarded, shall be established as a goal to be made available to certified DBE's. Compliance with the percentage goal may be fulfilled by DBE's performing as either:

- 1) A member of a joint venture as a prime contractor;
- 2) An approved subcontractor;
- 3) An owner-operator of equipment;
- 4) A renter of equipment to a prime contractor;
- 5) A firm manufacturing and supplying goods used in the project;

- 6) A firm supplying goods used in the project (when supplying goods, only 60 percent (60%) will be counted).

Prior to Contract award, the apparent successful bidder shall submit a written assurance of meeting the above goals and shall include names of DBE subcontractors, addresses of contact persons, a description of work to be performed and dollar values of each proposed DBE subcontract. This information shall be submitted on the attached "DBE Participation Form" furnished with this solicitation.

If the goals were not met, the bidder must demonstrate that sufficient good faith efforts were made to meet the DBE contract goals and shall document the steps he has taken to obtain DBE participation.

Failure to provide required documentation of good faith efforts may be reason for disqualification of the Bid / Proposal.

Bidders good faith efforts will include the following actions.

- a) Soliciting through all reasonable and available means the interest of all certified DBE's who have the capability to perform work under the contract. This shall include attendance at pre-bid meetings, advertising and /or written notices. the bidder shall allow sufficient time to allow the DBE's to respond to the solicitation.
- b) Selecting portions of the work to be performed by DBE's.
- c) Providing interested DBE's with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d) Negotiations in good faith with interested DBE's. It will be the responsibility of the bidder to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or materials consistent with the available DBE's. Evidence of negotiations shall include the names, addresses, and telephone numbers of DBE's that were considered and a description of the information provided regarding the plans and specifications for the work selected for subcontractors, and evidence as to why additional agreements could not be reached for DBE's to perform the work.
- e) Not rejecting DBE's as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- f) Efforts to assist interested DBE's in obtaining bonding, lines of credit, or insurance as required.
- g) Efforts to assist interested DBE's in obtaining necessary equipment, supplies, materials, or related assistance or services.
- h) Use of services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBE's.

The prime contractor agrees not to terminate for convenience a DBE subcontractor, and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without BATA's prior written consent. When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor agrees to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated.

28) PRODUCT DESCRIPTION

Bids or proposals must be accompanied by a comprehensive description of bidder's product. This description shall include drawings, overall dimensions and photographs which show the construction characteristics and explain the operation of the bidder's product. The descriptive literature shall also include information on design details, components, performance characteristics, methods of manufacture and assembly. The descriptive literature is required for the purpose of evaluation and award. Failure of the descriptive literature to show that the product proposed conforms to the specifications and other requirements of this solicitation may result in rejection of the bid or proposal. Additionally, failure to submit the descriptive literature will require rejection of the bid or proposal. The quality of standard components not covered by the language of these specifications will be a factor

in determining an award. No advantage shall be taken by the bidder or manufacturer in the omission of any part or detail which goes to make the product complete and ready for service, even though such part is not mentioned in this specification. All units or parts not specified shall be Contractor's standard units or parts and shall conform in materials, design and workmanship to the best practices known in the industry. All parts will be new and in no case will used, reconditioned, or obsolete parts be accepted without prior review and written acceptance by BATA.

29) DEMONSTRATION

Bidder may be requested to demonstrate to BATA the capability of their proposed product to perform and function as herein called for by this specification. The demonstration shall be at no expense to BATA in compliance with provisions outlined in the technical specifications contained herein.

30) PAYMENT TERMS

The Contractor may submit invoices to BATA upon delivery and acceptance of the Project by BATA. Invoices will be paid by BATA, if satisfactory, within ten (10) days after receipt of the invoice or acceptance of the work by BATA, whichever is later. Payment of invoices by BATA shall also be subject to provisions for performance and payment sureties, if any. The Contractor may submit invoices to BATA prior to or upon delivery. Payment will not be made without an invoice.

The BATA Project Manager shall have the power to withhold payment or nullify the whole or a part of any payment, to such extent as may be reasonably necessary to protect BATA from loss on account of:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of the Contractor to make payments properly to subcontractors for material or labor.
- (d) A reasonable doubt that the Contract can be completed for the balance then unpaid.
- (e) Damage to another Contractor.

When the above grounds are removed, payment shall be made for amounts withheld to another Contractor.

31) EQUAL EMPLOYMENT OPPORTUNITY

In implementing the Project, the Contractor may not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, 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 shall insert the foregoing provision (modified only to show the particular contractual relationship) in all its third party contracts for Project implementation, except contracts for standard commercial supplies or raw materials and construction contracts, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

32) WAGE RATES

This is a Davis-Bacon project. (Wage determination attached). Certified payroll must be submitted weekly.

<http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=Davis-Bacon&docid=MI20070006>

7.0: CONTRACT PROVISIONS
CONSTRUCTION

1) DURATION OF CONTRACT

This Contract shall become effective on _____ and shall remain in effect through _____. This Contract may be extended for up to two _____ with the concurrence of both parties.

2) PROJECT STARTUP

The Contractor agrees to commence work on this Project immediately upon the signing of this Contract by both parties and the issuance of a Notice to Proceed by BATA

3) PROJECT COMPLETION (BATA Board of Directors)

This Project shall be completed _____ days after execution of this Contract by both parties and issuance of a Notice to Proceed by BATA.

4) PROJECT COMPLETION (Notice to Proceed)

This Project shall be completed _____ days after Contract award by the BATA Board of Directors.

5) CONTRACT AMOUNT AND PAYMENT (Lump Sum)

BATA agrees to pay and the Contractor agrees to accept as payment in full the amount of \$ _____.

6) CONTRACT AMOUNT AND PAYMENT (Payment in Full)

BATA agrees to pay and the Contractor agrees to accept as payment in full the amounts shown in Exhibit _____, Payment Schedule.

7) CONTRACT AMOUNT AND PAYMENT (Payment Schedule)

BATA agrees to make payments for this Project in accordance with the Payment Schedule included as Exhibit _____. The Contractor agrees to accept these amounts as payment in full.

8) PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

The granting of any progress payment or payments by BATA, or the receipt thereof by the Contractor, shall not constitute in any sense acceptance of the work of any portion thereof, and shall in no way lessen the ability of the Contractor to replace unsatisfactory work or material, though the unsatisfactory

character of such work or material may not have been apparent or detected at the time such payment was made. Material, components or workmanship which does not conform to the instruction of these Contract requirements and specifications, or are not equal the samples submitted to and approved by BATA will be rejected and shall be replaced by the Contractor without delay.

9) LIQUIDATED DAMAGES
(Not Applicable)

In the event of delay in the completion of deliveries of _____ beyond the dates specified in the Contract

(Description of item or product)

And not subject to the Contract's Unavoidable Delay provision, BATA shall assess, as liquidated damages, \$100.00 per calendar day. These damages shall be deducted from any monies due, or which may thereafter become due to the Contractor under this Contract. Further, the Contractor agrees that sums assessed as liquidated damages shall not be considered penalties but reflect the cost to BATA for

(state basis for determining damages)

10) AGREEMENT CHANGES

Additions, deletions or modifications to this Agreement may be made only in accordance with a written agreement between the parties, signed on behalf of BATA by its Executive Director or the Project Manager.

11) DISPUTES

Except as otherwise provided in the Contract, any dispute concerning a question of fact arising under the Contract which is not disposed of by agreement shall be decided by the BATA Project Manager who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the BATA Project Manager shall be final, unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute thereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with BATA Project Manager's decision.

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this Contract shall be construed as making final the decision of any administrative official, representative or board on a question of law.

11) PATENT, TRADEMARK, COPYRIGHT, AND TRADE SECRET INFRINGEMENT

The Contractor warrants that the goods and services do not infringe on any patent, trademark, copyright or trade secret of any third parties and agrees to defend, indemnify and hold BATA, its officers, agents, employees, trustees and its successors and assigns, harmless from and against any and all liabilities, loss, damage or expense, including, without limitation, court costs and reasonable attorneys' fees, arising out of any infringement or claims of infringement of any patent, trade name, trademark, copyright or trade secret by reason of the sale or use of any goods or services purchased under this

Contract. BATA shall promptly notify the Contractor of any such claim. BATA makes no warranty that the production, sale or use of goods or services under this Contract will not give rise to any such claim and BATA shall not be liable to the Contractor for any such claim brought against the Contractor.

12) INDEMNIFICATION

The Contractor agrees to indemnify and hold BATA, its officers, agents, employees and/or trustees, harmless from and against any and all claims or causes of action brought against BATA and from any and all damages, losses, expenses, attorneys' fees, costs and liabilities sustained by BATA arising out of any claimed defect in the goods or services supplied by the Contractor, any claimed improper manufacture, design, design drawings, specifications, materials or repairs provided by the Contractor pursuant to the Contract, and any claim by a third party for patent, trademark, copyright, or trade secret infringement. The Contractor's obligation under this paragraph shall include the obligation to indemnify and hold BATA harmless for its own negligence whether active, passive or concurrent, in the performance of BATA's duties and obligations pursuant to the Contract.

13) PATENT RIGHTS

If any invention, improvement, or discovery of the Contractor is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor shall notify BATA immediately and provide a detailed report. The rights and responsibilities of BATA, the Contractor, and FTA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

14) RIGHTS IN DATA

The Contractor agrees to comply with the following provisions:

(a) The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations 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 does not include financial reports, cost analyses, and similar information incidental to Project administration.

(b) The following restrictions apply to all subject data first produced in the performance of this Agreement:

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

(2) As authorized by 49 CFR Part 18.34, the 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:

a) Any subject data developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and

- b) Any rights of copyright to which BATA, sub-recipient, or a third party contractor purchases ownership with Federal assistance.
- c) When FTA provides assistance to BATA for a project involving planning, research, development, or a demonstration, it is FTA's intent to increase the body of mass transportation knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FTA determines otherwise, the recipient of FTA assistance to support planning, research, development, or a demonstration financed under the Federal Transit Act as amended, understands and agrees that, in addition to the rights set forth in paragraph (b)(2) of this Agreement, FTA may make available to any FTA recipient, sub-recipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under this Agreement or a copy of the subject data first produced under this Agreement. In the event that the Project, which is the subject of this Agreement, is not completed for any reason whatsoever, all data developed under that Project shall become subject data as defined in paragraph (a) of this Agreement and shall be delivered as the Government may direct. Paragraph (a) of the Agreement, however, does not apply to adaptations of automatic data processing equipment or programs for BATA's use which costs are financed with capital funds (Sections 3, 9, 16, 18, or 25 of the Federal Transit Act, as amended, or Title 23 capital funds).
- d) Unless prohibited by State law, BATA agrees to indemnify, save and hold harmless the 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 BATA of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement. BATA shall not be required to indemnify the Government for any such liability arising out of the wrongful acts of employees or agents of the Government.
- e) Nothing contained in this section shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent. Paragraphs (2)b), (2)c), and (2)d) of this Agreement do not apply to material furnished to BATA by the Government and incorporated in the work carried out under the Agreement; provided that such incorporated material is identified by BATA at the time of delivery of such work.

15) COVENANT AGAINST GRATUITIES

The Contractor warrants that he or she has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of BATA with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of Contract.

16) ASSIGNABILITY

The terms and provisions of the Contract documents shall be binding upon BATA and the Contractor and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. The rights and obligations of the Contractor under the Contract may not be transferred, assigned, sublet, mortgaged, pledged or otherwise disposed of or encumbered in any way without BATA's prior written consent. The Contractor may subcontract a portion of its obligations to other firms or parties but only after having first obtained the written approval by BATA of the subcontractor. BATA may assign its rights and obligations under the Contract to any successor to the rights and functions of BATA or to any governmental agency to the extent required by applicable laws or governmental regulations or to the extent BATA deems necessary or advisable under the circumstances.

17) PRICE WARRANTY AND COMMISSIONS

The price to be paid by BATA shall be that stated in this Contract which the Contractor warrants to be no higher than the Contractor's current prices on orders by others for goods similar to those covered by this Contract for similar quantities under similar conditions and methods of purchase. In the event the Contractor breaches this warranty, the prices of the items shall be reduced to the Contractor's current prices on orders by others, or in the alternative at BATA's sole discretion, BATA may cancel this Contract without liability to the Contractor for breach. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, BATA shall have the right in addition to any other rights, to cancel this Contract without liability and to deduct from the Contract price or otherwise recover from the Contractor the full amount of such commission, percentage, brokerage or contingent fee.

18) RECORD RETENTION

During the course of the Project and for three (3) years thereafter, the Contractor agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as the Government may require. Reporting and record keeping requirements for governmental recipients are set forth in 49 CFR Part 18. Reporting and record keeping requirements for private nonprofit and for-profit recipients are set forth in OMB Circular A-110. Project close out does not alter these requirements.

19) CONTRACTOR'S LIABILITY INSURANCE

The Contractor shall maintain such insurance as will protect it from claims under Workers' Compensation Acts and other employee benefit acts; from claims for damages because of bodily injury, including death, to its employees and all others and from claims for damages to property; any or all of which may arise out of or result from the Contractor's operations under the Contract, or from any subcontractor or anyone directly or indirectly employed by either of them. This insurance shall be written for not less than the limits specified below. BATA shall be named as additionally insured in respect to all liability insurance policies. All policies shall contain an endorsement that written notice shall be given to BATA prior to termination, cancellation or reduction in coverage in the policy. Certificates of such insurance shall be filed with BATA prior to the start of the Contract.

- (a) Worker's compensation insurance shall be in the amount and coverage required by the State of Michigan to protect it from claims under the Worker's Compensation Act and other employee benefit acts.
 - (b) General comprehensive liability insurance, including bodily injury and death, and property damage insurance in the minimum amount of \$1,000,000 per occurrence.
 - (c) Automobile liability and garage keepers liability, including bodily injury and property damage, insurance in the minimum amount of \$2,000,000 per occurrence.
-

20) UNAVOIDABLE DELAYS

If delivery of completed Project under this Contract should be unavoidably delayed, the BATA Project Manager will extend the time for completion of the Contract for the determined number of days of excusable delay. A delay is unavoidable only if the delay was not reasonable expected to occur in connection with or during the Contractor's performance; was not caused directly or substantially by acts, omissions, negligence or mistakes of the Contractor, the Contractor's suppliers or their agents; was substantial and in fact caused the Contractor to miss delivery dates and could not adequately have been guarded against by contractual or legal means.

21) NOTIFICATION OF DELAY

The Contractor will notify the Project Manager as soon as the Contractor has, or should have, knowledge that an event has occurred which will delay completion of this Project. Within five (5) working days, the Contractor will confirm such notice in writing, furnishing as much detail as is available.

22) REQUEST FOR EXTENSION

The Contractor agrees to supply, as soon as such data are available, any reasonable proofs that are required by the BATA Project Manager to make a decision on any request for extension. The BATA Project Manager will examine the request and any documents supplied by the Contractor and will determine if the Contractor is entitled to an extension and the duration of such extension. The BATA Project Manager will notify the Contractor of the decision in writing. It is expressly understood and agreed that the Contractor will not be entitled to damages or compensation, and will not be reimbursed for losses on account of delays resulting from any cause under this provision.

23) CONTRACTOR'S REPRESENTATIVE

Prior to the start of Contract performance, the Contractor shall advise BATA in writing of the primary and alternate representatives (including phone numbers) who will have management responsibility for the total Contract effort to receive and act on technical matters and resolve problems of a contractual nature.

24) BAY AREA TRANSPORTATION AUTHORITY'S REPRESENTATIVES

Prior to the start of Contract performance, the BATA Project Manager will furnish a letter to the Contractor indicating the personnel who will represent BATA in the administration of this Contract to insure successful performance. Such letter shall include the specific duties of each individual and their limits of authority.

25) INSTRUCTIONS BY UNAUTHORIZED THIRD PERSONS

In accordance with the Contract Changes provision of the Contract, The BATA Project Manager or his/her authorized representative are the only persons authorized to make changes within the general scope of the Contract.

Any instructions, written or oral, given to the Contractor by someone other than the BATA Project Manager or his/her authorized representative, which are considered to be a change in the Contract, will not be considered as an authorized Contract Change. Any action on the part of the Contractor taken in compliance with such instructions will not be grounds for subsequent payment or other consideration in compliance with the unauthorized change.

26) TERMINATION OF AGREEMENT

(See Federal Clauses)

27) INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to receive any benefit therefrom.

28) DBE PARTICIPATION

(See Federal Clauses)

29) DEBARMENT AND SUSPENSION

(See Federal Clauses)

30) ENVIRONMENTAL, RESOURCE CONSERVATION, AND ENERGY REQUIREMENTS

Environmental Protection. The Contractor agrees to comply with applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321 et seq.; section 14 of the Federal Transit Act, as amended, 49 USC app. §§ 1610; Council on Environmental Quality regulations, 40 CFR Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures" at 23 CFR Part 771 and 49 CFR Part 622.

Air Quality. The Contractor agrees to comply with applicable requirements of EPA regulations, "Conformity To State Or Federal Implementation Plans Of Transportation Plan, Programs, And Project Developed, Funded Or Approved Under Title 23 USC Or The Federal Transit Act", 40 CFR Part 51, Subpart T; and "Determining Conformity Of Federal Actions To State Or Federal Implementation Plans", 40 CFR Part 93. To support the requisite air quality conformity finding for the Project, the Contractor agrees to implement each air quality mitigation and control measure incorporated in the Project. The Contractor agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure, will be wholly consistent with the description of the design concept and scope of the Project set forth in the SIP. EPA also imposes requirements pertaining to the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Thus, the Contractor should be aware that the following EPA regulations, among others, may apply to its Project; "Control Of Air Pollution From Motor Vehicles And Motor Vehicle Engines", 40 CFR part 85; "Control Of Air Pollution From New And In-Use Motor Vehicles And New And In-Use Motor Vehicle Engines: Certification And Test Procedures", 40 CFR Part 86; and "Fuel Economy Of Motor Vehicles", 40 CFR Part 600. Use Of Public

Lands. No publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance may be used for the Project unless specific findings required by 49 USC § 303 are made by U.S. DOT. Historic Preservation. The Contractor agrees to assist the Government (FTA) to comply with section 106 of the National historic Preservation Act, 16 USC § 470f, involving historic and archaeological preservation by:

- a) Consulting the State Historic Preservation Officer on the conduct of investigations, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic And Cultural Properties", 36 CFR Part 800, to identify properties and resources listed in or eligible for inclusion in the National Register Of Historic Places that may be affected by the Project, and notifying the Government (FTA) of the existence of any such properties; and,
- b) Complying with all Federal requirements to avoid or mitigate adverse effects upon such properties. Energy Conservation. The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with the Energy Policy And Conservation Act, 42 USC §§ 6321 et seq.

Mitigation of Adverse Environmental Effects. Should the proposed Project cause adverse environmental effects, the Contractor agrees to take all reasonable steps to minimize such effects pursuant to 49 USC app. § 1610, all other applicable statutes, and the procedures set forth in 23 CFR Part 771 and 49 CFR Part 622. The Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and statements required by 49 USC § 303) and with any conditions imposed by the Government as part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in and made part of this Agreement by reference. As soon as the Government and the Contractor reach agreement on any mitigation measures that have been deferred, those measures will then be incorporated into this Agreement. Such mitigation measures may not be modified or withdrawn without the express written approval of the Government.

31) LABOR PROVISIONS: NON-CONSTRUCTION CONTRACTS

Pursuant to regulations set forth in 29 CFR, Part 5, the Contractor agrees to comply with applicable labor provisions for non-construction contracts. Requirements for compliance are as follows.

- a) Overtime Requirements: No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1 1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week.
- b) Violation; Liability For Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in Subparagraph (b)(1), 29 CFR, Section 5.5, 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 such Territory) for liquidated damages. Such liquidated damages shall be computed with respect to each employed in violation of the clause set forth in Subparagraph (b)(1) of 29 CFR, Section 5.5, in the sum of \$10 for each calendar day in which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by the clause set forth in Subparagraph (b)(1) of 29 CFR, Section 5.5.

- c) Withholding For Unpaid Wages And Liquidated Damages: FTA or BATA 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 Subparagraph (b)(2) of 29 CFR, Section 5.5.

- d) Subcontracts: The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in Subparagraph (a) through (d) of this provision 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 Subparagraphs (a) through (d) of this paragraph.

Non-Construction Contracts: The requirements clauses contained in 29 CFR, Section 5.5 (b) or paragraphs (a) through (d), are applicable to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR, Section 5.1. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) 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. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying or transcription by authorized representatives of FTA, DOT, or the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

32) TITLE VI COMPLIANCE OF THE CIVIL RIGHTS ACT OF 1964

The Contractor agrees to comply with, and assure the compliance by its subcontractors under this Project, with all requirements of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d; U.S. DOT regulations, "Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation -- Effectuation Of Title VI Of The Civil Rights Act", 49 CFR Part 21.

33) COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor warrants that it is and will remain in compliance with all federal, state, and local laws, regulations, and ordinances relating to the manufacture, sales, and delivery of the goods and services sold to BATA in connection with this Contract.

34) NOTICE OF FEDERAL REQUIREMENTS

The Contractor understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date an Agreement was executed may be modified from time to time. The Contractor agrees that the changed requirements will apply to the Project as required. All standards or limits set forth in this Agreement to be observed in the performance of the Project are minimum requirements.

35) PROHIBITED INTEREST

No BATA employee, officer, or agent, including any member of an evaluation committee for an BATA project, may participate in the selection, award, or administration of an BATA contract if a real or apparent conflict of interest would exist. Such a conflict would exist when any of the parties set forth below has a material financial or other interest in a firm selected for award:

- any employee, officer, or agent of BATA; any member of his/her immediate family;
 - his/her partner; or an organization employing or about to employ any of the above.
 - Any interest as owner or stockholder of one percent (1%) or less in such a firm shall not be deemed to be a material financial interest, but serving as Director, officer, consultant, or employee of such an organization would be deemed a material interest.
-

36) AUDIT AND INSPECTION

For contract awards not based on competitive bidding procedures as defined by the Secretary Of Transportation, the Contractor agrees to permit the Secretary Of Transportation and the Comptroller General of the United States, or their duly authorized representative, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

37) EQUAL EMPLOYMENT OPPORTUNITY

In implementing the Project, the Contractor may not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, 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 shall insert the foregoing provision (modified only to show the particular contractual relationship) in all its third party contracts for Project implementation, except contracts for standard commercial supplies or raw materials and construction contracts, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in, and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in, and is a part of, all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers, all applicants and all non-construction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas

designated by the Director pursuant to §60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under the Executive order.

Refer to [43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45 FR 65978, Oct. 3, 1980; 79 FR 72995, Dec. 9, 2014] for more information if needed.

38) LOBBYING CERTIFICATION

(See Federal Clauses)

39) AMERICANS WITH DISABILITIES ACT

The Contractor agrees to and assures that any subcontractor under this Project complies with all applicable requirements of the Americans With Disabilities Act of 1990 (ADA), 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; section 16 of the Federal Transit Act, as amended, 40 USC app. § 1612; and the following regulations and any amendments thereto:

- U.S. Dot regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 CFR Part 37;
- U.S. Dot regulations, "Nondiscrimination On The Basis Of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", 49 CFR Part 27;
- U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles", 49 CFR Part 38;
- Department of Justice (DOJ) regulations, "Nondiscrimination On The Basis Of Disability in State and Local Government Services", 28 CFR Part 35;
- DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and In Commercial Facilities", 28 CFR Part 36;
- General Services Administration regulations, "Accommodations for the Physically Handicapped", 41 CFR Subpart 101-19;
- Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 CFR Part 1630;
- Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled", 47 CFR Part 64, Subpart f; and,
- FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 CFR Part 609.

40) PRIVACY

The Contractor agrees:

- a) To comply with the Privacy Act of 1974, 5 USC § 552a, and regulations thereunder, when performance under the Project involves the design, development, or operation of any system of records on individuals to be operated by the Recipient, its third party contractors, subrecipients, or their employees to accomplish a Government function;
- b) To notify the Government when the Contractor, subcontractor, or their employees anticipate operating a system of records on behalf of the Government in order to implement the Project, if such system contains information about individuals retrievable by the individual's name or other identifier assigned to the individual. A system of records subject to the Act may not be used in carrying out this Project until the necessary and applicable approval and publication requirements have been

met. The Contractor, subcontractor, and their employees agree to correct, maintain, disseminate, and use such records as required by the Act, and to comply with all applicable terms of the Act;

c) To include in every solicitation and in every third party contract and sub-agreement when the performance of work under that proposed third party contract or sub-agreement may involve the design, development, or operation of a system of records on individuals to be operated under that third party contract or sub-agreement to accomplish a Government function, a Privacy Act notification informing the third party contractor, or subrecipient that it will be required to design, develop, or operate a system of records on individuals to accomplish a Government function subject to the Privacy Act of 1974, 5 USC § 552a, and Federal agency regulations, and that a violation of the Act may involve the imposition of criminal penalties.

41) REMEDIES / BREACH OF CONTRACT

If the Contractor breaches any provision in this Contract, the Contractor agrees to reimburse BATA for all damages suffered, including but not limited to incidental, consequential and other damages, as well as lost profits. The remedies in this Contract shall be cumulative and in addition to any other remedies allowed to BATA under applicable law. No waiver by BATA of any breach or remedy shall be a waiver of any other breach or remedy.

42) PROMPT PAYMENT

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from BATA. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of BATA. This clause applies to both DBE and non-DBE subcontractors.

43) DBE AND SBA SUBCONTRACTOR'S PAYMENT & REPORTING REQUIREMENTS

A) Prompt Payment

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from BATA. The prime contractor agrees further to return retainage payments to

each subcontractor within 10 days after subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of BATA. This clause applies to both DBE and non-DBE subcontractors.

B) Contractor Reporting Requirements

The prime contractor agrees to count only the value of the work actually performed by the DBE firm toward its overall DBE goal. When a DBE performs as a participant in a joint venture, the prime contractor agrees to count the portion of the work of the contract that the DBE performs with its own forces toward its DBE goal only if the DBE is performing a commercially useful function of the contract. The factors listed in 49 CFR Part 26 will be used to determine whether a DBE trucking firm is performing a commercially useful function. The prime contractor understands that expenditures with DBEs for materials or supplies toward DBE goals will be counted according to the factors listed in 49 CFR Part 26. The prime contractor agrees to meet with the BATA DBE Liaison Officer for the purpose of verifying contractor reporting requirements prior to the signing of a contract.

C) Legal and Contract Remedies

The prime contractor agrees to report quarterly to the BATA DBE Liaison Officer on all payments made to DBE subcontractors. Further, the contractor shall provide all copies of canceled checks made to DBE subcontractors showing proof of actual payment. The prime contractor understands that failure to report quarterly to the BATA DBE Liaison Officer may result in the termination of this contract or such other remedy as BATA deems appropriate.

The prime contractor understands that BATA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the DOT inspector General, action under suspension and debarment of Program Fraud or Civil Penalties rules) provided in 26.109. The prime contractor understands that BATA will consider similar action under their own legal authorities, including responsibility determinations in future contracts.

44) OSHA REQUIREMENTS

The Contractor expressly warrants that all materials, supplies, and equipment provided under this Contract are provided in full compliance with the Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders issued pursuant thereto, and all other federal and state safety and health statutes. All sales of hazardous materials as defined in Title 29 of the cost of Federal Regulation, Chapter VII, parts 1501-1503, shall be accompanied by a completed U.S. Department of Labor "Materials Safety Data Sheet", Form OHFA-20 by the Contractor for each good sold to BATA.

45) CARGO PREFERENCE

(Not Applicable)

Pursuant to 46 CFR, Part 381, the Contractor agrees:

a) To utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to 46 CFR, Part 381, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.

b) To furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment 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 paragraph (a) above to BATA (through the prime Contractor in the case of subcontractor Bills-Of-Lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street SW, Washington, DC, 20590, marked with appropriate identification of the Project.

a) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.

46) BUY AMERICA

**(See Federal Clauses
Section 8, pg. 70)**

47) CHANGE ORDERS

BATA's Project Manager, at any time by written order and without notice to the sureties, may make changes within the general scope of this Contract in (i) drawings, designs or specifications where the supplies to be furnished are to be specially manufactured for BATA in accordance therewith; (ii) method of shipment or packing; (iii) place of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of this Contract, whether changed or not changed by such order, an equitable adjustment shall be made by written modifications of the Contract. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided that BATA's Project Manager, if he decides that the facts justify the action, may receive and act upon any such claim. Nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

Without invalidating the Contract, BATA may, at any time, order additions, deletions or revision in the Project by Change Orders. Upon receipt of an executed Change Order, Contractor shall proceed with the work involved. BATA Project Manager may authorize minor changes or alterations in the Project not involving extra cost and not inconsistent with the overall intent of the Contract. These changes will be authorized by a Bulletin and will be binding upon BATA and Contractor. Additional work be binding upon BATA and Contractor. Additional work performed by Contractor without authorization of a Change Order will not entitle Contractor to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as set forth in these Contract Conditions.

48) PRODUCT WARRANTY

The Contractor expressly warrants that the goods provided under this Contract shall conform to all specifications, drawings, and other descriptions of the goods made by the Contractor or contained in specifications furnished to the Contractor by BATA, and shall be free from all defects in material, design and workmanship. The Contractor also expressly warrants that the goods are merchantable and fit for the particular purpose intended by BATA. The warranties of the Contractor contained in this Contract extend to future performance of the goods sold under this Contract. The Contractor further agrees not to attempt to limit or to exclude any remedies for damages, whether incidental, consequential or otherwise.

49) WARRANTY AND GUARANTEE

The Contractor hereby warrants to BATA that all of the equipment furnished under the procurement shall be free from defects in material and workmanship under normal operating use and service. The Contractor shall provide such a Warranty beginning at the time of final acceptance of the system and continuing for a period of one (1) year on all equipment. The Warranty shall cover all parts and labor costs during the Warranty period. The remedial work to correct any of the potential deficiencies shall

include the repair or replacement, at the Contractor's option, of equipment, components, devices and/or material. It is expressly understood that this Warranty covers all parts and labor costs necessary and that all cost for the necessary labor and material during the Warranty period shall be borne by the Contractor and not by BATA except as provided for herein.

The Contractor also agrees to provide all labor and material to replace, during the period of this Warranty, without expense to BATA, any and all parts which may be damaged due to defects in, or failure of such parts or of any other part or parts of the equipment furnished under the procurement. BATA shall maintain the equipment in accordance with the Contractor's instructions in order to maintain this Warranty, and the Contractor shall be responsible for all shipping charges.

Contractor shall be solely responsible for all materials and workmanship, including all specialties and accessories, whether manufactured by it or others, used in the equipment and for adequate installation and connection of all equipment, accessories, specialties and components. Under no conditions shall Contractor delegate this responsibility to suppliers or other sources.

Any apparatus, device or material which, in the sole opinion of BATA, requires excessive service during its operation, shall be brought to the attention of the Contractor by BATA at the conclusion of the first year but prior to the expiration of the Warranty. The Contractor shall be required to repair or replace the apparatus, device or material (at his or her determination of the problem and its cause) at no expense to BATA. Should a "class failure" be involved, the Contractor may be required by BATA to extend the Warranty on that item until the requirement for excessive service is eliminated. Excessive service is defined as three (3) failures (an event or failure of a given device and/or component in a unit or units which renders the unit or units inoperative and/or unsuitable for the intended purpose) or malfunctions (an event or failure of a given device and/or component in a unit or units which causes a degraded performance of the equipment, but does not render the equipment inoperative) during the Warranty period. A "class failure" is a failure of a given component and/or device in five percent (5%) of the equipment provided during the Warranty period. The determination of a "class failure" shall be by BATA and shall assume that all equipment within its respective category has these defects and shall ultimately experience these same failures.

In the event the Contractor fails to comply within ten (10) working days to a request by BATA to repair, replace or correct damaged or defective work, materials, specialties, equipment and accessories, BATA shall, upon written notice to the Contractor, have authority to deduct the cost of labor and material incurred by BATA itself in making such repairs from any compensation due or to become due the Contractor. In the event the Contractor has been paid, the Contractor agrees to reimburse BATA for the cost thereof. It is understood, however, that the said Warranty or Guarantee will not apply to any equipment which has been repaired or altered without the knowledge or consent of the Contractor and which repair or altering affected its stability and/or reliability; nor will said Warranty or Guarantee apply if the equipment has been subjected to other than normal use under conditions which prevail in BATA service. The burden of proof for any negligence on the part of BATA shall rest with the Contractor. Temperature, humidity, bus vibration and ambient electric conditions shall be considered normal operating conditions for this equipment. The Warranty shall not cover the replacement and maintenance items (such as light bulbs) made in connection with normal maintenance service.

Labor costs for BATA to diagnose and to exchange faulty components, subassemblies or equipment and the shipping costs to return such items to a service location nominated by the Contractor for repair or replacement as provided for herein shall be at the expense of the Contractor. The shipping costs, including packing and insurance, to ship repaired or replaced items to BATA shall be at the expense of the Contractor.

Contractor guarantees that a stock of replacement parts for the equipment and all components thereof, will be available for a period of not less the fifteen (15) years after the date of acceptance of the completed system under this Contract by BATA.

The above Warranties are in addition to any statutory implied Warranties or Remedies imposed on the Contractor.

50) INTERCHANGEABILITY

All units and components procured under this Contract, whether provided by suppliers or manufactured by the Contractor shall be duplicates in design, manufacture and installation to assure interchangeability among items in this procurement. This interchangeability shall extend to the individual components as well as to their locations in the unit.

51) TITLE

Title to goods acquired by BATA under this Contract shall pass to BATA when such goods are delivered, installed and accepted by BATA. The Contractor shall bear all risk of loss until passage of title, or adequate documents for securing title shall be provided to BATA by the Contractor.

52) INSPECTION

(a) BATA reserves the right and shall be at liberty to inspect all materials and workmanship at any time during the manufacturing or installation process; provided, however, it is under no duty to make such inspection, and no inspection so made shall relieve Contractor from any obligation to furnish materials and workmanship strictly in accordance with the instructions, Contract requirements and specifications.

Any work or material found to be in any way defective or unsatisfactory shall be corrected or replaced by the Contractor at its own expense at the order of BATA notwithstanding that it may have been previously overlooked or passed by an inspector. Inspection shall not relieve the Contractor of its obligations to furnish materials and workmanship in accordance with this Contract and its specifications.

55) ASSUMPTION OF RISK OF LOSS

BATA shall assume risk of loss of the vehicle after delivery to its facility. Prior to this delivery or release, the Contractor shall have risk of loss of the vehicle, including any damages sustained during the common carrier drive-away operation. Drivers shall keep a maintenance log en'route and it shall be delivered to BATA with the vehicle.

56) SAFETY STANDARDS

The Contractor agrees that pursuant to Section 107 of the Contract Work Hours and Safety Standards Act and Department of Labor regulations set forth at 29 CFR, Section 1926, no laborer or mechanic working on a construction contract shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his or her health and safety as determined under construction and health standards promulgated by the Secretary of Labor.

57) NONDISCRIMINATION IN CONSTRUCTION CONTRACTS

During the performance of this Contract, the Contractor agrees as follows:

- a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, 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.
- b) 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, or national origin.
- c) The Contractor will send to each labor union or representative of workers with which it has a Collective Bargaining Agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- b) 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.
- c) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the Secretary of Labor and FTA for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Federal or Federally-assisted 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 otherwise provided by law.

The Contractor will include the provisions of paragraphs (a) through (g) of this subsection 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 shall be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Labor or FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that if a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

58) LABOR PROVISIONS: CONSTRUCTION CONTRACTS

(1) Minimum Wages:

(a) 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 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 the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under § 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 29 CFR § 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but no less often than quarterly) under plans, funds, or programs that 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 at 29 CFR, § 5.5(a)(4), laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR, § 5.5(a)(1)(ii) and the Davis-Bacon poster, WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) The contracting officer shall require that any class of laborers or mechanics that is not listed in the wage determination and that 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:

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

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 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.

(3) In the event the Contractor, 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 so advise the contracting officer or will notify the contracting officer within the thirty (30) day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR § 5.5(a)(i)(1)(B) or 29 CFR § 5.5(a)(i)(1)(C), 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.

(c) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding:

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 the Contractor, under this agreement or any other federal contract with the same recipient or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is withheld 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, FTA may, after written notice to the Contractor, sponsor, applicant, or BATA, 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:

(a) 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 (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/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 costs 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.

(b) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to FTA if FTA is a party to the Contract; but if FTA is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or BATA, as the case may be, for transmission to FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i). 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 No. 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors.

2 Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the Contractor or Subcontractor or his/her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

a That the payroll for the payroll period contains the information required to be maintained under 29 CFR § 5.5(a)(3)(i) and that such information is correct and complete;

b 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 at 29 CFR Part 3;

c 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.

3 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 29 CFR § 5.5(a)(3)(ii)(B).

4 The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under 18 USC Section 1001 and 31 USC Section 231.

(c) The Contractor or Subcontractor shall make the records require under 29 CFR § 5.5(a)(3)(i) available for inspection, copying, or transcription by authorized representatives of FTA 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 make them available, FTA may, after written notice to the Contractor, sponsor, applicant, or BATA, 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 make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

(4) Apprentices and Trainees:

(a) 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/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 Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage on the wage determination for the classification of work actually performed. In addition, any apprentice performing

work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman 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 determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a state apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) 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, that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) EQUAL EMPLOYMENT OPPORTUNITY. The utilization of apprentices, trainees, and journeymen under 29 CFR Part 5 shall be in conformity with the Equal Employment Opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

- (5) Compliance with Copeland Act Requirements:
The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated herein by reference.
- (6) Contract Termination: Debarment:
A breach of the Contract clauses in 29 CFR § 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR § 5.12.
- (7) 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 incorporated herein by reference.
- (8) Disputes Concerning Labor Standards:

Disputes arising out of the labor standard provisions of this Contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(9) Certification of Eligibility:

(a) By entering into this agreement or a third party contract financed under this agreement, the Contractor certifies that neither it (nor he nor she) nor any person or firm that has an interest in the Contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(b) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a government Contract by virtue of § 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC § 1001.

(10) 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 work week in which he/she is employed on such work to work in excess of forty (40) hours in such work week 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 (40) hours in such work week.

(11) Violation; Liability for Unpaid Wages; Liquidated Damages:

In the event of any violation of the requirements of 29 CFR § 5.5(b)(1), the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (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 29 CFR § 5.5(b)(1) in the sum of ten (\$10) dollars for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by 29 CFR § 5.5(b)(1).

(12) Withholding For Unpaid Wages And Liquidated Damages:

FTA or the 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 at 29 CFR § 5.5(b)(2).

(13) Subcontracts:

The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in subsections (1) through (12) of this Agreement 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 subsection (1) through (12) of this Agreement.

59) EQUAL EMPLOYMENT OPPORTUNITY

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order No. 11246):

- 1) As used in these specifications:
 - a) "Covered Area" means the geographical area described in the solicitation from which this contract resulted;
 - b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c) "Employer Identification Number" means the Federal Social Security Number used on the employer's quarterly Federal Tax Return, U.S. Treasury Department Form 941;
 - d) "Minority" includes:
 - i) Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
 - ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish culture or origin, regardless of race);
 - iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and,
 - iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- 3) If the Contractor is participating (pursuant to 41 CFR § 60-4.5) in a hometown plan approved the U.S. Department of Labor in the covered area, either individually or through an association, its Affirmative Action obligations on all work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such hometown plan. Each Contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any covered Contractor's or subcontractor's failure to made good faith efforts to achieve the plan goals and timetables.
- 4) The Contractor shall implement the specific Affirmative Action standards provided in paragraphs (7)(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally-Assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any office of Federal Contract Compliance Programs Office or from Federal Procurement Contracting Officers. The Contractor is

expected to make substantially uniform progress toward its goal in each craft during the period specified.

5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order No. 11246, or the regulations promulgated pursuant thereto.

6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7) The Contractor shall take specific Affirmative Actions to ensure Equal Employment Opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement Affirmative Action steps at least as extensive as the following:

a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all Foremen, Superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b) Establish and maintain a current list of minority and female recruitment sources, provide written notice to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs of the sources compiled under (7)(b) above.

f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g) Review, at least annually, the company's EEO policy and Affirmative Action obligations under these specifications with all employees having responsibility for hiring, assignment, layoff,

termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i) Direct recruitment efforts, both oral and written to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one (1) month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notice to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth, both on the site and in other areas of the Contractor's work force.

k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m) Ensure the seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n) Ensure that all facilities and company activates are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between sexes.

o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO polices and Affirmative Action obligations.

8) Contractors are encouraged to participate in voluntary associations that assist in fulfilling one or more of their Affirmative Action obligations set forth in paragraphs (7)(a) through (p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under paragraphs (7)(a) through (p) of these specifications, provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female wok force participation, made a good faith effort to meet its individual goals and timetables, and can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor, the obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (even though the Contractor has achieved its goal for

women generally, the Contractor may be in violation of the Executive Order is a specific minority group of women is underutilized).

10) The Contractor shall not use the goals and timetables or Affirmative Action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order No. 11246, as amended, and its implementing regulations, by the Office Of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order No. 11246, as amended.

13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific Affirmative Action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure Equal Employment Opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR § 60-4.8.

14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, laborer, or helper), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the extent that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

Nothing herein provided shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

60) PROJECT SIGN

The Contractor agrees to erect a 4' x 8' sign at the Project construction site and maintain the sign for the duration of the Project. The sign shall be satisfactory to BATA and shall include the following information at a minimum: The Project name, BATA's name, Federal, State, and local financial participation information, the Contractor's name, and the Architect's name. The sign layout shall be submitted to BATA and the design team for review and approval prior to installation.

61) LABOR AND MATERIALS

Unless otherwise provided in the Contract, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in the Project.

62) PERMITS AND FEES

Unless otherwise provided in the Contract, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Project which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

63) CONSTRUCTION SCHEDULE

The Contractor, promptly after being awarded the Contract, shall prepare and submit for BATA's information, a Contractor's Construction Schedule for the Project. The schedule shall not exceed time limits current under the Contract, shall be revised at appropriate intervals as required by the conditions of the Project, shall be related to the entire Project to the extent required by the Contract, and shall provide for expeditious and practicable execution of the Project.

64) CLEAN UP

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Project, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials. If the Contractor fails to clean up as provided in the Contract, BATA may do so and the cost thereof shall be charged to the Contractor.

65) SUBCONTRACTORS

Contractor shall be fully responsible for all acts and omissions of Subcontractors and of persons directly or indirectly employed by them and persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract shall create any contractual relationship between any Subcontractor and BATA or any obligation on the part of BATA to pay or to see to the payment of any moneys due any Subcontractor, except as may otherwise be required by law. BATA may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to Contractor for specific work done.

66) SAFETY AND PROTECTION

Contractor shall be responsible for initiating, maintaining and supervising safety programs in connection with the Project. Contractor shall take precautions and provide protection to prevent damage, injury, or loss to:

Employees on the Project and other person who may be affected thereby;

The Project and materials or equipment to be incorporated therein, whether in storage on or off the site; and,

Other property at the site or adjacent thereto, both above and below ground, not designated for removal, relocation, or replacement. Contractor shall erect and maintain necessary safeguards for safety and protection of property and shall notify BATA of adjacent utilities when performance of the

Project may affect them. Contractor shall be responsible for costs associated with all damage, injury, or loss.

Damage, injury, or loss to property referred to in this Article caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor and anyone directly or indirectly employed by any of them and anyone for whose acts any of them may be liable, shall be remedied. Contractor duties and responsibilities for the safety and protection of the Project shall continue until the Project is completed and BATA has issued the Certificate of Completion.

67) EMERGENCIES

In emergencies affecting the safety of persons, the Project or adjacent property, Contractor, without authorization from BATA, is obligated to act, at Contractor's discretion, to prevent threatened damage, injury, or loss. Contractor shall give BATA prompt notice of the emergency action taken, and any significant changes in the Project or deviations from the Contract caused thereby.

68) WORK BY OTHERS

BATA may perform or may contract with others to do additional work related to the Project. Contractor shall afford others a reasonable opportunity to perform work as well as to store materials and equipment on site and shall properly integrate and coordinate Contractor's work with others. Contractor shall coordinate and cooperate with Contractors working in the area for other BATA's or jurisdictions.

If any part of Contractor's work depends on proper execution or results upon the work of other Contractors, or BATA, Contractor shall inspect and promptly report to BATA any defects or deficiencies in such work. Contractor's failure to so report shall constitute an acceptance of the other work as fit and proper for integration with Contractor's work.

69) REJECTING DEFECTIVE WORK

BATA Project Manager will have authority to disapprove of or reject defective work. BATA Project Manager will also have authority to require special inspection or testing of work whether or not the work is fabricated, installed or completed.

70) CHANGE ORDERS **(see clause 47)**

71) CHANGES IN CONTRACT PRICE

The Contract Price constitutes the total compensation payable for performing all duties, responsibilities and obligations assigned to or undertaken by Contractor. The Contract Price may only be changed by a Change Order. Claims for a change in the Contract Price shall be submitted to BATA Project Manager within fifteen (15) calendar days of the occurrence of the event giving rise to the claim with supporting data. Claims for extra compensation shall not be made by Contractor for reasonable delays caused by the work of other Project Contractors or Subcontractors or due to the failure of BATA to perform any obligations required of BATA under this Contract.

Value of work covered by a Change Order shall be determined as follows:

Where work is covered by Contract unit prices by application of unit prices to the items involved.
By mutual acceptance of a lump sum.

On the basis of the cost of the work, plus overhead and profit, but only in the event BATA and Contractor cannot agree on one of the above methods.

72) INSPECTION AND TESTING

If the Contract laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to be inspected, tested, or approved by someone other than Contractor, Contractor shall give BATA Project Manager timely notice of readiness therefore. Such tests shall be in accordance with the methods prescribed by the applicable organization or Contract. Neither observations by BATA Project Manager nor inspections, tests or approvals by persons other than Contractor shall relieve Contractor from obligations to perform the Project required by the Contract, laws, ordinances, rules, regulations or orders of public authority having jurisdiction.

73) ACCESS TO WORK

The BATA Project Manager, his/her representatives, and representatives of BATA shall at all times have access to the Project. Contractor shall provide proper facilities for access, observation of the work, and for any inspection or testing by manufacturers, suppliers, material men, and other parties as authorized by BATA.

74) UNCOVERING WORK

If work requiring inspection, testing or approval is covered either without the BATA Project Manager's written approval where required or contrary to the BATA Project Manager's specific request, the work shall, if requested by the BATA Project Manager, be uncovered for observation and replaced at the Contractor's expense.

If the BATA Project Manager considers it necessary or advisable that covered work be inspected or tested, Contractor, at BATA Project Manager's request, shall uncover and expose that portion of the work. If the work is defective, Contractor shall bear all the expenses of satisfactory repair and reconstruction, as verified by the BATA Project Manager, including compensation for additional engineering services. If such work is not found to be defective, Contractor shall be allowed increases in Contract Price, an extension of Contract Time or both, directly attributable to such uncovering and reconstruction.

75) CORRECTION OR REMOVAL OF DEFECTIVE WORK

Contractor shall promptly, as specified by the BATA Project Manager, either correct any defective work or remove it from the site and replace it with non-defective work. If Contractor does not correct or remove and replace such rejected work within a reasonable time, BATA may have the deficiency corrected or the rejected work removed and replaced by others. All direct and indirect costs of such correction or removal, and replacement, including compensation for additional engineering services, shall be paid by Contractor in an amount as verified by the BATA Project Manager. Contractor shall also repair all work of others destroyed or damaged by replacement of Contractor's defective work.

76) ONE YEAR CORRECTION PERIOD

Prior to the expiration of one year after the date of Certification of Completion or date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract, Contractor shall promptly correct identified defective work or remove it from the site and replace it with non-defective work. If Contractor does not promptly comply, BATA's rights to correction will be the same as for defective work in this Article. Repairs and replacements made under this article shall bear an additional twelve (12) month correction period dated from the acceptance of repair and replacement.

77) NEGLECTED WORK BY CONTRACTOR

If Contractor should neglect to prosecute the work diligently, including requirements of the Construction Schedule, BATA, after seven (7) days' Notice to Contractor may, without prejudice to any other remedy that BATA may have, correct and remedy any such deficiency. Direct and indirect costs of BATA, including compensation for additional engineering services, shall be verified by BATA Project Manager and an appropriate reduction in the Contract Price will be made. If the payments due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to BATA.

78) WARRANTY

The Contractor warrants to BATA that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform with the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by BATA, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

79) PROGRESS PAYMENTS AND RETAINAGES

For Projects with a Construction Schedule exceeding ninety (90) days, Contractor may submit requests for partial payment. Payment requests shall be proportional to work completed on the Project. BATA will retain ten (10%) percent of any payment until final completion of the Project.

80) PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

The granting of any progress payment or payments by BATA, or the receipt thereof by the Contractor, shall not constitute in any sense acceptance of the work or any portion thereof, and shall in no way lessen the ability of the Contractor to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Materials, components or workmanship which does not conform to the instruction of these

Contract requirements and specifications, or are not equal the samples submitted to and approved by BATA Project Manager will be rejected and shall be replaced by the Contractor without delay.

81) CONTRACTOR'S WARRANTY OF TITLE

Contractor warrants and guarantees that title to all work, materials and equipment covered by monthly payment requests, passes automatically to BATA at the time of payment, free and clear of all liens.

82) PAYMENT WITHHELD

The BATA Project Manager may not approve any payment or may nullify any payment previously recommended, to such extent as may be necessary to protect BATA from loss because:

Work is defective or completed work has been damaged requiring correction or replacement.

Written claims have been made against BATA or liens have been filed in connection with the Project.

Contract Price has been reduced by Modifications.

BATA has been required to correct defective work or complete neglected work.

Unsatisfactory prosecution of the Project, including failure to clean-up or failure to perform testing as required by field quality control.

83) SUBSTANTIAL COMPLETION

When BATA Project Manager considers that the Project has been substantially but not entirely completed and full completion thereof is materially delayed through no fault of Contractor, the BATA Project Manager will issue a Certification of Substantial Completion. Liquidated damages for that portion of work will not be assessed beyond the date of Substantial Completion.

84) NOTIFICATION OF COMPLETION

When Contractor considers the work required in the performance of this Contract to be complete and ready for final inspection, Contractor shall so notify BATA Project Manager.

85) THE MICHIGAN IRAN ECONOMIC SANCTIONS ACT, 2012 P.A. 517

Pursuant to the Michigan Iran Economic Sanctions Act, 2012 P.A. 517, by submitting a bid, proposal or response, Respondent certifies, under civil penalty for false certification, that it is fully eligible to do so under law and that is not an "Iran linked business" as that term is defined in the Act.

86) VETERAN'S HIRING PREFERENCE

The Bay Area Transportation Authority is receiving of federal financial assistance in this contract. The contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5 CFR) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection

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.

8.0: FTA REQUIRED CLAUSES
Construction

2) BUY AMERICA REQUIREMENTS
49 U.S.C. 5323(j) 49 CFR Part 661

APPLICABILITY TO CONTRACT

Applies only to Contracts over \$150,000 in value.

FLOW DOWN

The Buy America requirements flow down from FTA recipients and sub recipients to first tier contractors, who are responsible for ensuring that lower their contractors and subcontractor, are in compliance.

REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 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 60 percent domestic content. A bidder or offeror must submit to the BATA the appropriate Buy America certification (below) 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 nonresponsive. This requirement does not apply to lower tier subcontractors.

6) SEISMIC SAFETY REQUIREMENTS
42 U.S.C. 7701 et seq.49 CFR Part 41

APPLICABILITY TO CONTRACT

Construction of new buildings or additions to existing buildings.

FLOW DOWN

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

REQUIREMENTS

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

7) **ENERGY CONSERVATION REQUIREMENTS**
42 U.S.C.6321 et seq. 49 CFR Part 18

APPLICABILITY TO CONTRACT

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

FLOW DOWN

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

REQUIREMENTS

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

8) **CLEAN WATER REQUIREMENTS**
33 U.S.C 1251

APPLICABILITY TO CONTRACT

Applies only to Contracts over \$150,000 in value.

FLOW DOWN

The Clean Water requirements flow down to FTA recipients and sub recipients at every tier.

REQUIREMENTS

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

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

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

APPLICABILITY TO CONTRACT

Applies only to Contracts over \$150,000 in value.

FLOW DOWN

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

REQUIREMENTS

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

has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the BATA.

12) ACCESS TO RECORDS AND REPORTS
49 U.S.C. 5325 18 CFR 18.36(i) 49 CFR 633.17

APPLICABILITY TO CONTRACT

Applies only to Contracts over \$150,000 in value.

FLOW DOWN

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

REQUIREMENTS

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

1. The Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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

3. Where any Purchaser which is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

4. 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.

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

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

13) FEDERAL CHANGES
49 CFR Part 18

APPLICABILITY TO CONTRACT

Applies to all contracts.

FLOW DOWN

The Federal Changes requirement flows down appropriately to each applicable change requirement.

REQUIREMENTS

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

14) BONDING REQUIREMENTS

APPLICABILITY TO CONTRACT

Applies to contracts over \$150,000.

FLOW DOWN

Bonding requirements flow down to the first tier contractors.

REQUIREMENTS

Bid Bond Requirements (Construction)

Bid Security

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

As security for the acceptance of the Contract, each bid shall be accompanied by a bidder's bond or certified check in the amount of five percent (5%) of the bid drawn payable to the Bay Area Transportation Authority. Such bid deposits of all bidders will be held by BATA until all bids submitted shall have been canvassed, and the bids have either been rejected in whole or in part, or the award of the Contract or Contracts has been made. The bid deposit of the successful bidder will be held until the Contract is duly executed. Bid deposits will be returned to unsuccessful bidder(s) upon award of the Contract. If the successful bidder to whom the Contract has been awarded refuses to execute the Contract within ten (10) calendar days, after Contract award, the amount of its bid deposit shall be forfeited to and retained by BATA as liquidated damages for such neglect or refusal, and BATA may proceed to place the order with another company.

Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by BATA 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 BATA.

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 BATA, 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 BATA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

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 BATA as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense BATA for the damages occasioned by default, then the undersigned bidder agrees to indemnify the BATA and pay over to the BATA the difference between the bid security and the BATA's total damages, so as to make the BATA whole.

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

Performance and Payment Bonding Requirements (Construction)

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

A. Performance bonds

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

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

B. Payment bonds

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

- a) Fifty percent of the contract price if the contract price is not more than \$1 million.
- b) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- c) Two and one half million if the contract price is more than \$5 million.

2) If the original contract price is \$5 million or less, the BATA may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

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

The following situations may warrant a performance bond:

- 1) BATA property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
- 2) A contractor sells assets to or merges with another concern, and the BATA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
- 3) Substantial progress payments are made before delivery of end items starts.
- 4) Contracts are for dismantling, demolition or removal of improvements.

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

- 1) The penal amount of performance bonds shall be 100 percent of the original contract price, unless the BATA determines that a lesser amount would be adequate for the protection of the BATA.
- 2) The BATA may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The BATA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

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

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

The penal amount of payment bonds shall equal:

- Fifty percent of the contract price if the contract price is not more than \$1 million;
- Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The BATA shall determine the amount of the advance payment bond necessary to protect the BATA.

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

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

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

15) CLEAN AIR
42 U.S.C.7401 et seq 40 CFR 15.61 49 CFR Part 18

APPLICABILITY TO CONTRACT
(Applies only to Contracts over \$150,000 in value.)

FLOW DOWN
The Clean air requirements flow down to all sub contracts which exceed \$100,000.

REQUIREMENTS

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended 42 U.S.C. §§ 7401 ET seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

17) DAVIS-BACON ACT
40 USC & 167;276a-5(1998) 29 CFR 5 (1999)

APPLICABILITY TO CONTRACT

Construction contracts over \$2,000.00

FLOW DOWN

Applies to third party contractors and subcontractors.

REQUIREMENTS

(1) Minimum Wages –

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

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

(ii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iii) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(iv)

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the

amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

(2) Withholding –

The BATA 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 BATA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and Basic Records –

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

(ii)

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

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

(4) Apprentices and Trainees –

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the

rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

(5) Compliance with Copeland Act Requirements –

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts –

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

(7) Contract Termination: debarment –

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

(8) Compliance with Davis-Bacon and Related Act Requirements

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

(9) Disputes Concerning Labor Standards

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

(10) Certification of Eligibility

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

18) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
40 U.S.C. 327-333(1999) 29 C.F.R. 5(1999) 29 C.F.R. 1926(1998)

APPLICABILITY TO CONTRACT

Section 102 of the Act, which deals with overtime requirements, applies to all construction contract in excess of \$2,000 and; all turnkey, Rolling stock and operational contracts (excluding contracts for transportation services) in excess of \$2,500.

FLOW DOWN

Applies to third party contractors and subcontractors.

REQUIREMENTS

(These clauses are specifically mandated under DOL regulations 29 FR § 5.5 and when preparing a construction contract in excess of \$2,000 these clauses should be used in conjunction with the Davis-Bacon Act clauses as discussed previously. For non-construction contracts, this is the only section required along with the payroll section.)

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

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

(3) Withholding for unpaid wages and liquidated damages - The BATA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any

moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

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

(5) 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.

Section 107 (OSHA):

(This section is applicable to construction contracts only)

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

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

19) COPELAND ANTI-KICKBACK ACT
40 U.S.C. 276c(1999) 29 C.F.R. 3(1999) 29 C.F.R. 5(1999)

APPLICABILITY TO CONTRACT

All construction contracts over \$2,000.

FLOW DOWN

Applies to third party contractors and subcontractors.

REQUIREMENTS

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract. Since there is no specific statutory or regulatory requirement for additional mandatory language, I would recommend that no additional clauses are necessary for this provision.

20) NO GOVERNMENT OBLIGATION TO THIRD PARTIES

APPLICABILITY TO CONTRACT

To all contracts.

FLOW DOWN

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

REQUIREMENTS

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

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

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 CONTRACT

To all contracts.

FLOW DOWN

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

REQUIREMENTS

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

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

§ 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

22) TERMINATION
49 U.S.C. Part 18 FTA Circular 4220.1F

APPLICABILITY TO CONTRACT

Contracts with nonprofit organizations and institutions of higher education in excess of \$150,000 and all other contracts in excess of \$10,000.

FLOW DOWN

Flow down to all contracts in excess of \$10,000, with exception of contracts with nonprofit organizations of higher learning.

REQUIREMENTS

1.Termination for Convenience (General Provision) The BATA 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 BATA to be paid the Contractor. If the Contractor has any property in its possession belonging to the BATA, the Contractor will account for the same, and dispose of it in the manner the BATA directs.

2.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 BATA 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 BATA 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 BATA, 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.

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

If Contractor fails to remedy to BATA's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor or written notice from BATA setting forth the nature of said breach or default, BATA 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 BATA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

5. Termination for Convenience (Professional or Transit Service Contracts) The BATA, 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 BATA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

6. 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 BATA may terminate this contract for default. The BATA 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 BATA.

7. 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 BATA may terminate this contract for default. The BATA 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 the BATA's goods, the Contractor shall, upon direction of the BATA, protect and preserve the goods until surrendered to the BATA or its agent. The Contractor and BATA 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 BATA.

8. 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 BATA may terminate this contract for default. The BATA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the BATA 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 BATA 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 BATA in completing the work.

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

A. 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 BATA, acts of another Contractor in the performance of a contract with the BATA, epidemics, quarantine restrictions, strikes, freight embargoes; and

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

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

9. Termination for Convenience or Default (Architect and Engineering). The BATA may terminate this contract in whole or in part, for the BATA's convenience or because of the failure of the Contractor to fulfill the contract obligations. The BATA 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 BATA, 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 BATA may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the BATA.

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 BATA.

10. Termination for Convenience or Default (Cost-Type Contracts) The BATA may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the BATA 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 BATA, or property supplied to the Contractor by the BATA. If the termination is for default, the BATA 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 BATA and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the BATA, 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 BATA 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 BATA, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

23) GOVERNMENT-WIDE DEBARMENT AND SUSPENSION NON-PROCUREMENT

APPLICABILITY TO CONTRACT

Certification regarding Debarment, Suspension, and Other Responsibility Matters Lower Tier Covered Transactions Third Party Contracts over \$25, 000.

FLOW DOWN

Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$25, 000. Thus, the terms "lower tier covered transaction" include both contractor and subcontractors and contract and subcontracts over \$25, 000.

REQUIREMENTS

Instructions for Certification

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, BATA may pursue available remedies, including suspension and/or debarment.

2.The prospective lower tier participant shall provide immediate written notice to BATA if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

3.The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact BATA for assistance in obtaining a copy of those regulations.

4.The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by BATA.

5.The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non procurement List issued by U.S. General Service Administration.

6.Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

7.Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, BATA may pursue available remedies including suspension and/or debarment.

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

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

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

24) PRIVACY ACT
5 U.S.C. 552

APPLICABILITY TO CONTRACT

When a contractor maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier.

FLOW DOWN

Flow down to each third party contractor and their contract at every tier.

REQUIREMENTS

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1)The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

25) CIVIL RIGHTS REQUIREMENTS

*29 U.S.C. 632, 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.*

APPLICABILITY TO CONTRACT

Apply to all contracts.

FLOW DOWN

Flow down to all third party contractors and their contracts at every tier.

REQUIREMENTS

The following requirements apply to the underlying contract:

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

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

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts

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

compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties

26) BREACHES AND DISPUTE RESOLUTION
49 CFR Part 18 FTA Circular 4220.1F

APPLICABILITY TO CONTRACT

Applies only to Contracts over \$150,000 in value

FLOW DOWN

Flow down to all tiers.

REQUIREMENTS

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

Performance During Dispute - Unless otherwise directed by BATA, 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 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 BATA 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 BATA in which the BATA is located.

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

27) PATENT AND RIGHTS IN DATA
37 CFR Part 401 49 CFR Parts 18 and 19

NOT APPLICABLE

APPLICABILITY TO CONTRACT

Applies ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information.

FLOW DOWN

Apply to all contractors and their contract at every tier.

REQUIREMENTS

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

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

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the

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

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

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

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

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

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

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

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

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

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local

government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

29) DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

REQUIREMENTS

The Federal Fiscal Year goal has been set by the BATA in an attempt to match projected procurements with available qualified disadvantaged businesses. The BATA's goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by the BATA as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, the BATA may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

(a)Policy - It is the policy of the Department of Transportation and the BATA that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of the BATA to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the BATA's procurement activities are encouraged.

(b)DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

(c)Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the BATA may declare the contractor noncompliance and in breach of contract.

(d)The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the BATA's DBE program. These records and documents will be made available at

reasonable times and places for inspection by any authorized representative of the BATA and will be submitted to the state upon request.

(e)The BATA will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBE
- Available listing of Minority Assistance Agencies
- Holding bid conferences to emphasize requirements
- DBE Program Definitions, as used in the contract:
- Disadvantaged business “means a small business concern”:
 - Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
 - Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
 - Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and
 - Whose management and daily business operations are controlled by one or more women individuals who own it.

“Small business concern” means a small business as defined by Section 3 of the Small Business Act and Appendix B – (Section 106(c) Determinations of Business Size.

“Socially and economically disadvantaged individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to

be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

“Black Americans”, which includes persons having origins in any of the Black racial groups of Africa;

“Hispanic Americans”, which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

“Native Americans”, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

“Asian-Pacific Americans”, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

“Asian-Indian Americans”, which includes persons whose origins are from India, Pakistan, and Bangladesh.

30) STATE AND LOCAL LAW DISCLAIMER

APPLICABILITY TO CONTRACT

This disclaimer applies to all contracts.

FLOW DOWN

The Disclaimer has unlimited flow down.

REQUIREMENTS

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the BATA’s procurement documents, the grantees should consult with their local attorney.

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

APPLICABILITY TO CONTRACT

Applies to all contracts.

FLOW DOWN

The incorporation of FTA terms has unlimited flow down.

REQUIREMENTS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated 11/01/2008, 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 BATA requests which would cause the BATA to be in violation of the FTA terms and conditions.

32) FLY AMERICA
49 U.S.C. 40118 41 CFR Part 301-10

APPLICABILITY TO CONTRACT

Applies ONLY to contracts involving international air transportation of persons or materials.

FLOW DOWN

The Fly America requirements flow down from FTA recipients and sub recipients to first tier contractors, who are responsible for ensuring that lower tier contractors are in compliance.

REQUIREMENTS

The Contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag carriers to the extent services by U.S.-flag carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974f. as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers." 41 C.F.R. §§ 301.131 through 301.143.

34) ENVIRONMENTAL PROTECTION

REQUIREMENTS

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

35) ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES (ADA)

REQUIREMENTS

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504

of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

- U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- Any implementing requirements FTA may issue.

36) NOTIFICATION OF FEDERAL PARTICIPATION

APPLICABILITY TO CONTRACT

Applies ONLY to contracts for goods and services, including construction, valued at over \$500,000.

REQUIREMENTS

In the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Contractor agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract.

37 PROMPT PAYMENT

APPLICABILITY TO CONTRACT –

All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts

9.0: REQUIRED FEDERAL CERTIFICATES

INSTRUCTION FOR FILLING OUT THIS FORM ARE ON OTHER SIDE

DBE PARTICIPATION FORM

Separate information is required for each DBE subcontractor. This form may be duplicated as necessary.

1. DBE Firm Name: _____
Address: _____

2. Dollar amount awarded: _____

3. Description of work to be performed: _____

4. CONTRACTOR'S COMMITMENT TO USE DBE FIRM

_____ is committed to utilize the DBE contractor to utilize
(Name of Contractor)
the above named DBE subcontractor/supplier in the manner and amount described on this form.

Dated _____
_____ (Authorized Signature)

5. DBE'S COMMITMENT TO PARTICIPATE

_____, as a DBE firm, is committed to perform the work
(Name of subcontractor/supplier)
as described above for the amount specified.

Dated _____
_____ (Authorized Signature)

6. NO SUBCONTRACT OPPORTUNITIES, AVAILABLE.

_____, has no subcontractor opportunities available for work
(Name of subcontractor/supplier)
to be performed.

Dated _____
_____ (Authorized Signature)

BLANK forms are NOT acceptable. If DBE subcontractor opportunities are available please fill out sections 1 thru 5. If no subcontractor opportunities available fill out section 6. SIGNATURES ARE REQUIRED.

DBE PARTICIPATION FORM

Separate information is required for each DBE subcontractor. This form may be duplicated as necessary.

1. DBE Firm Name: _____
Address: _____
Sub contractor name and address

2. Dollar amount awarded: _____
Amount awarded to Sub contractor

3. Description of work to be Performed: _____

Work description.

4. **CONTRACTOR'S COMMITMENT TO USE DBE FIRM** **Prime contractor fills out.**
_____, is committed to utilize the DBE contractor to
(Name of Contractor)
utilize the above named DBE subcontractor/supplier in the manner and amount described on this form.
Dated _____ (Authorized Signature)

5. **DBE'S COMMITMENT TO PARTICIPATE** **Sub contractor fills out.**
_____, as a DBE firm, is committed to perform the
(Name of subcontractor/supplier)
work as described above for the amount specified.
Dated _____ (Authorized Signature)

6. **NO SUBCONTRACT OPPORTUNITIES, AVAILABLE.** **Prime contractor fills out.**
_____, has no subcontractor opportunities
(Name of subcontractor/supplier)
available for work to be performed.
Dated _____ (Authorized Signature)

**CERTIFICATION OF PRIMARY CONTRACTOR REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY
MATTERS**

The Primary Contractor, _____, certifies to the best of its knowledge and belief, that it and its principals:

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

If the above named Primary Contractor is unable to certify to any of the the statements in this certification, the Primary Contractor shall attach an explanation to this certification.

The Primary Contractor, _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provision of 31 U.S.C. Section 3801 et seq. are applicable thereto.

Signature and Title of Authorized Official

**CERTIFICATION OF LOWER-TIER PARTICIPANTS (SUBCONTRACTORS) REGARDING
DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

The Lower Tier Participant (Subcontractor to the Primary Contractor), _____, certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

If the above named Lower Tier Participant (Subcontractor) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal.

The Lower-Tier participant (Subcontractor), _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31. U.S.C. Sections 3801 et seq. are applicable thereto.

Signature and Title of Authorized Official

BUY AMERICA CERTIFICATE

Pursuant to Section 165 of the Surface Transportation Assistance Act of 1982, as amended by Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, FTA regulations at 49 CFR, Part 661, and at 49 CFR, Part 663, and guidance issued by FTA, all bidders shall submit the following certificate with their bid or proposal. Failure to submit this certificate will automatically disqualify the bidder from consideration of a Contract award for this Project. An exemption from the "Buy America" requirements may be sought by BATA if grounds for an exemption exist.

Please check the appropriate box (661.6 or 661.12) then complete remainder of form.

§661.6 Certification requirements for procurement of steel or manufactured products.

If steel, iron, or manufactured products (as defined in §§661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in §661.13(b) of this part.

§661.12 Certification requirement for procurement of buses, other Rolling Stock and associated equipment.

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in §661.13(b) of this part.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that *it will* comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661 for Goods, *or* for 49 CFR 661.11 for Rolling Stock.

DATED: _____

COMPANY: _____

SIGNATURE: _____

PRINTED NAME:

TITLE: _____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that *it cannot* comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

DATED: _____

COMPANY: _____

SIGNATURE: _____

PRINTED NAME:

TITLE: _____

CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____, _____, hereby certify on
(Name) **(Title)**
behalf of _____ that:
(Firm)

- (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 any 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 sub-awards at all tiers (including subcontracts, sub-grants, 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 is 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 or not less than \$10,000 and not more than \$100,000 for each such failure.

Dated _____

(Name)

(Title)

(Firm)