



***Pennyrile Allied Community Services, Inc.***

## Request for Proposal RFP

**Description:** In Vehicle Digital Video Recording Systems

**Pre-Proposal Conference:** None

**RFP Deadline:**

**RFP Delivery:** Please send all proposals by air courier, messenger service, hand delivery, US Postal Service or electronically to:  
***Pennyrile Allied Community Services, Inc.***

**ATTN: Vickie Pennington**

**100 S Liberty Street**

**Hopkinsville, KY 42241**

**Vickie.pennington@pacs-ky.org**

**Ph: 270-228-4886**

**Fax: 270-228-4886**

**Date and Time of RFP Opening: November 1, 2022-- 9:00 AM CST**

***Proposals received after 4:00 PM EDT on November 14, 2022, will not be accepted and will be rejected.***

**Questions and Approved Equals Request Deadline:**

Questions and Approved Equals request may be submitted in writing by email to [Vickie.pennington@pacs-ky.org](mailto:Vickie.pennington@pacs-ky.org) or faxed to 270-228-4886 before **November 9, 2022 by 4 PM CST.**

**Answers to Questions and Approved Equals requests:**

Questions should be directed to Transportation Director, Vickie Pennington. Changes and addendums will also be emailed to known possible candidates based on the return of "Confirmation of Receipt".



***Pennyrile Allied Community Services, Inc.***

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**\*\*\*PLEASE SEND THE CONFIRMATION OF RECEIPT AS SOON AS POSSIBLE\*\*\***

All prospected requests must return this "Confirmation of Receipt" as soon as possible to receive addendums and to properly document questions/answers pertaining to this RFP. You may send the completed "Confirmation of Receipt" by fax to 270-228-4886 or email to [Vickie.pennington@pacs-ky.org](mailto:Vickie.pennington@pacs-ky.org).

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

Phone #: \_\_\_\_\_

Address: \_\_\_\_\_

Fax#: \_\_\_\_\_

City/State: \_\_\_\_\_

E-mail: \_\_\_\_\_

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

Signature: \_\_\_\_\_

Date \_\_\_\_\_

# Request for Proposal (RFP)

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# Request for Proposal

## A. Instructions for Proposal

### A.1 RFP Notice

The purchaser, Pennyrile Allied Community Service, Inc. (PACS) hereby gives notice that it will receive sealed proposals for Digital Video Recording Systems including installation, shipping destination, training and all necessary tools and equipment to successfully complete the specified project based on intent and specifications.

Mailing address: Pennyrile Allied Community Services, Inc  
1100 S Liberty Street  
Hopkinsville, KY 42241  
Attn: Vickie Pennington

***Date and Time of RFP Opening: November 1, 2022-- 9:00 AM CST***

Proposals will not be opened until after the date and time indicated below as closing date at the following location:

Pennyrile Allied Community Services, Inc PACS  
1100 S Liberty Street  
Hopkinsville, KY 42241

Proposals must remain in effect for a period of ninety (90) days, until an award is made, or until the Kentucky Transportation Cabinet, Office of Transportation Delivery approves PACS to make the award. Contract must remain effective from the date of the contract award the contract must stay open for Two (2) years from the date of the award. Prices will be at or within reason of fair market prices.

**ALL PROPOSALS MUST BE RECEIVED BY PACS BY 4:00 PM CST ON NOVEMEBR 14, 2022.**

**ONLY PROPOSALS HAVING A COMPLETE PACKAGE LISTED IN APPENDIX A (PAGE 94), INCLUDING THE SIGNED FTA STANDARD FEDERAL CLAUSES CERTIFICATION OF COMPLIANCE PAGE FOUND IN SECTION E (PAGE 72) WILL BE CONSIDERED. ALL PRICING MUST BE LISTED ON THE STANDARD REQUIRED PRICING PROPOSAL FORM (Appendix D).**

**Special Instructions for all proposals:**

**If you MEET BUY America Requirements, please sign the top of page 17**

**If you do not Meet Buy America Requirements, please sign the bottom of Page 17**

**If you Do NOT Meet Buy America Requirements but have an Exemption or Waiver, please sign the bottom of page 17 and provided evidence of your exemption or waiver.**

## A.2 Intent of the request for proposal

The purpose in soliciting Request for Proposals (RFP) is to secure a vendor(s) that will provide quality on board camera systems. The intent of this RFP is to provide pricing for Fifty (50) Digital Video Recording Camera Systems with (30) *options* to purchase additional Digital Video Recording Systems for a total of Eighty (80) over a two (2) year period as needed. The contract must stay open for two (2) years from award date.

**All digital video systems are to be installed on approximately 28' cutaway buses on a Ford E Series chassis with wheelchair lifts located in the passenger side near the rear of the vehicle. 2011 or newer Ford Transit vans or smaller vehicles. The Ford Transit vans have the wheelchair lifts in the rear of the vehicles.**

**Vehicles listed in the section titled "Vehicle Listing for Initial Installation" is a current but always changing vehicle listing and may change due procurement of newer vehicles and many possible unknown circumstances. The list is intended as reference for cost purposes.**

**For the initial installation, we expect between 48-53 of the system installations, 28-32 will be in Ford Transit vehicles or minivans 18-24 will be 28' cutaway buses.**

**The thirty (30) Future Options may include smaller vehicles such as mini vans, mid-size Ford Transit and 28' cutaway buses.**

The entire system is to be made of entirely new parts and components. The specification of this RFP indicates minimum requirements unless otherwise noted. The price quoted shall include items of labor, materials, tools, equipment, clean up and any other costs necessary to complete manufacturing, delivery Destination, installation, set up, testing, and training for PACS staff.

No change orders either deleting from or adding to these specifications will be allowed after the contract has been awarded without prior written PACS/ Kentucky Transportation Cabinet, Office of Transportation Delivery approval.

### **A.3 Acceptance of Proposal**

PACS reserves the right to accept any proposal or to reject any and all Proposals on such basis as PACS deems to be in its best interest, subject to applicable federal and state laws and regulation. Awards shall be made to the highest scoring proposal. Awards shall be made only to responsible party that possess the potential ability to perform successfully under the terms and conditions of this proposal. Lowest proposal does not guarantee award.

### **A.4 Contractual Obligation**

Each proposal shall be submitted with the understanding that within ninety (90) days of opening, until an award is made, or until the Kentucky Transportation Cabinet, Office of Transportation Delivery approves PACS to make the award, the acceptance in writing by PACS shall constitute a contract between PACS and the requestor which shall bind them to furnish and deliver at the proposed price in accordance with the conditions of said accepted proposal. Unless extended, in writing, prior to the expiration of the ninety (90) day period, the proposal expires, and no award may be made there under.

### **A.5 Clarifications and Protests:**

No later than November 9, 2022, anyone may request the purchaser to give clarification of approved equals for portions of the specification. Written notice of any changes, or approved equals allowed will be posted on our website [www.pacs-ky.org](http://www.pacs-ky.org) no later than November 10, 2022. The proposals must comply will all specified items, or the proposals will be considered non-responsive. No exceptions to the specification will be allowed after the RFP opening.

Any protests that may arise prior to or following the opening shall be filed in accordance with the Appeal Procedures "Model Clauses".

***Potential proposals must return the Confirmation of Receipt as soon as possible, but prior to the end of the question submission period in order to receive addendums and to properly document questions/answers pertaining to this RFP.***

**A.6 Summary of items to be supplied with RFP:**

See RFP Checklist of Required Documents and Signatures located in Appendix A on page 94.

**A.7 Terms of Payment:**

The purchaser will make full payment within 30 days of completion and written acceptance by the purchaser (PACS). Completion and acceptance of the Digital Video systems will not release the awarded vendor from liability for any corrections of faults found after final payment has been made. See section D.9, Prompt Payment Clause on page 9 for additional terms.

**B. Warranties:**

The Proposal must provide complete information on support in the initial proposal. The proposed support and associated costs will be taken into consideration in the award of a contract. Any standard warranty shall apply.

All warranties shall provide, at a minimum, that all replacement materials and repairs (including labor) needed due to defects in material and workmanship will be furnished and installed promptly without charge. The warranty time period(s) shall begin on the date the Digital Video Recorders are installed in properly working order and signed off upon completion of the job.

**C. Termination:**

The purchaser may immediately terminate the contract resulting from this RFP for any of the following reasons:

**C.1a Termination for Convenience:** The purchaser may terminate this contract, in whole or in part, at any time by written notice to the contractor. The contractor shall be paid its costs, including contract closeout costs, a profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to the purchaser to be paid the contractor. If the contractor has any property in its possession belonging to the purchaser, the contractor will account for the same, and dispose of it in the manner the purchaser directs.

**C.2b Termination for Lack of Funds:** The purchaser may terminate this contract, or any part of it, because of non-availability to the purchaser of funds required under the terms of this contract, by serving notice of termination upon the contractor. In such event, the contractor shall be paid, from available funds, in accordance with the provisions of C.1.a.

## **C.2c Termination for Default:**

If the contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the contractor fails to perform in the manner called for in the contracts, or if the contractor fails to comply with any other provision of the contract, the purchaser 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 the purchaser later determines 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 purchaser, 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.

## **D. Additional Clauses concerning intent of RFP**

### **D1. INDEMNIFICATION**

The purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Kentucky Transportation Cabinet in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Kentucky Transportation Cabinet 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.

### **D.2. CLAIRIFICATIONS, EXCEPTIONS, APPROVED EQUALS, PROTESTS**

No later than November 9, 2022, all potential proposals may request the purchaser to give clarification of approved equals for portions of the specification. Written notice of any changes, or approved equals allowed will be posted on our website [www.pacs-ky.org](http://www.pacs-ky.org) no later than November 10, 2022. The RFP must comply with all specified items, or the proposal will be considered non-responsive. No exceptions to the specifications will be allowed after the RFP opening.

In accordance with USDOT/FTA requirements, brand names, or equal descriptions, are used as a means to define the performance or other salient characteristics of procurements. Even if the phrase or approved equal is inadvertently omitted, it is implied after any brand name.

Many Standard equipment and documents also contain a clause in general provisions that states that even if the phrase “or approved equal” is inadvertently omitted, it is implied after any name brand.



Any protests that may arise prior to or following the RFP opening shall be filed in accordance with the "Appeals Procedures."

#### D.3.GEOGRAPHICAL PREFERENCE CLAUSE

Pennyrile Allied Community Services, Inc. has no geographical preference in regard to this RFP.

#### D.4. NON-DISCRIMINATION ASSURANCE CLAUSE

The Contractor, sub recipient of contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of the contract, which may result in the termination of this or such other remedy as the recipient deems appropriate.

#### D.5. CHANGES IN WORK CLAUSE

All changes in work and/or Change Order must have prior written approval of the Office of Transportation Delivery/KYTC.

#### D.6. ASSIGNMENT CLAUSE

The KYTC/Office of Transportation Delivery must provide written approval for assignments to any part of this agreement or Project.

#### D.7. SITE VISITS CLAUSE

Authorized representatives of the KYTC/Office of Transportation Delivery have the right to visit the site at intervals to protect the State and Federal Interest and determine compliance with State and Federal regulations.

#### D.8. ACCESS TO RECORDS CLAUSE

KYTC/Office of Transportation Delivery and the Federal Transit Administration (FTA) personnel have the right to inspect/Audit grant records at any time during the grant period.

#### D.9. PROMPT PAYMENT CLAUSE

Contracts resulting from the proposal shall be subject to a financial assistance contract between purchaser and the Kentucky Transportation Cabinet (KYTC) office of Transportation Delivery (OTD) and the Federal Transit Administration (FTA). Contractor may request a copy of the purchaser letter of approval from the OTD to accompany any purchase order.

The purchaser shall make full payment within 30 days of final completion and written acceptance by purchaser (PACS).

If the camera systems are not found to be totally acceptable, a payment of 90% of the total purchase and installation costs shall be made within 60 days. The remaining will remain unpaid until such time as the winning proposal brings the cameras up to 100% final acceptance.

If the Cameras are totally unacceptable, no payment will be made until deficiencies are corrected on the purchaser's property, the awarded proposal must remove the Cameras at his expense.

Delivery and acceptance of the Cameras will not release the potential awarded proposal from liability for repair of faulty workmanship or materials found after final payment has been made.

#### D.10. PAYMENT DISPUTE/PAYMENT DISPUTE CLAUSE INCLUDING ARBITRATION

A claim is a demand, or assertion, by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term Claim also includes other disputes and matters in question between Pennyriple Allied Community Service, Inc. and the Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the claim.

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial (or other) Arbitration Rules, and judgment on the award rendered by the arbitrator (w) may be entered in any court having jurisdiction thereof.

#### D.11. SMALL BUSINESS CLAUSE

In regard to the arrangement of the solicitation, times for the opening, delivery schedules, etc. These will be made in a manner to facilitate participation by Small Business Concern. The definition, size standards, and average gross receipts of Small business are found in 13 CFR Part 121.

NOTE: For access to specific sections of CODE OF FEDERAL REGULATIONS 13-CFR PART 121

SBA's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for "small business" concerns. Size standards have been established for types of economic activity, or industry, generally under North American Industry Classification System (NAICS).

NAICS is described in North American Industry Classification Manual-United States, which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; by calling 1(800)553-6846 or 1(703)605-6000; or via the Internet at <http://www.ntis.gov/products/naics.aspx> . The manual showing relationship between 1997 NAICS and 1987 SICs, and a comprehensive index. NAICS assigns codes to all economic activity within twenty broad sectors. Section 121.201 provides a full table of small business size standards matched to U.S. NAICS industry codes. A full table matching a size standard with each NAICS Industry or U.S. Industry code is also published annually by SBA in the FEDERAL REGISTER.

R 30840, May 15, 2000, as amended at 67 FR 52602. Aug 13, 2002, 74 FR 46313, Sept. 9, 2009

## D12. FINANCIAL AGREEMENT CLAUSE

This contract is subject to a financial assistance contract between Pennyryle Allied Community Service, Inc. and Kentucky Department of Transportation, and the Federal Transit Administration, U.S. Department of Transportation.

## D.13 LIQUIDATED DAMAGES CLAUSE

As actual damages, for any delays in completion, are impossible to determine, the Contractor and his surety will be liable for, and pay to Pennyryle Allied Community Services, Inc., in accordance with General Conditions the aggregate sum of \$25.00 per day, for each incomplete system, as fixed and agreed liquidated damages for each calendar day of delay until the contract work is substantially completed and accepted. Pennyryle Allied Community Service, Inc. shall have the right to deduct liquidated damages from money in hand, otherwise due, or to become due, to the Contract Work, or to sue and recover compensation for damages for failure to substantially complete the work within the time frame stipulated herein. Said Liquidated Damages shall cease to accrue from the date of substantial completion.

It is expressly understood that Pennyryle Allied Community Services, Inc., shall be under no obligation whatsoever for any excess costs arising from changes, modifications or extra work orders not specifically approved by the PACS Transportation Director, as evidenced by one or more writings signed of the parties in which the excess cost or costs is specifically written. These costs may include but are not limited to, expenses, labor, overtime, parts, tools, legal representation or any other unforeseen financial responsibility regarding this fixed price.

## D.14 APPLICABLE LAWS CLAUSE

This agreement shall be in accordance with the laws of the Commonwealth of Kentucky, Federal law, and rules or the Federal Transit Administration.

## D.15 INSURANCE

The request for proposal awarded shall maintain insurance during the performance of the contract from one or more insurance companies licensed in the Commonwealth of Kentucky to provide the following forms of insurance, said insurance companies to be reasonably satisfactory to PACS. Upon the execution of a Contract, the RFP shall furnish PACS with Certificates of Insurance showing PACS has been listed as an additional insured. All Insurance is to remain in full force and effect until all work under the Contract has been satisfactorily completed and accepted by PACS.

### Workers Compensation

Employer's Liability	\$1,000000
All States Endorsement	Statutory
Voluntary Compensation	Statutory

## Public Liability and Property Damage

\$500,000 for bodily injuries to or death of one person in any one occurrence.

\$500,000 for bodily injuries to or death of two or more persons in any one occurrence.

\$1, 00000 for damage to or destruction of property in any one occurrence.

## Errors and Omissions Insurance

### D.16 Disadvantaged Business Enterprise (DBE)

This contract and project is subject to the requirements of 49 CFR Part 26, Participation by Disadvantage Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. This project does not have a DBE goal. Proposals are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

### DBE Opportunity list language:

Award of this contract is conditioned on submission of the following accompanying the sealed proposal.

1. Names and addresses of DBE firms that will participate in the contract
2. A description of work each DBE will perform.
3. The dollar amount of the participation of each DBE firm participating.
4. Written documentation of the proposal's commitments to use a DBE subcontractor whose participation it submits to meet the contract goals.
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and,
6. If the contract goal is not met, evidence of good faith efforts to do so. (Examples found in Appendix A of 49 CFR Part 26).

The contractor must notify the Purchaser whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform work through its own forces or those of an affiliate without prior written consent of the Purchaser and KYTC.

DBE Prompt Payment Clause:

1. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work performed. In addition, the contractor may not hold retainage from its subcontractors it is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily complete.
2. ADA Guidelines: This project must be in compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Transportation ADA regulations as referenced in 49 CFR Part 37.
3. Equal Opportunity/Affirmation Action employer and is a Drug free Work Place: PACS, Inc. is an equal opportunity/affirmative action employer and is a zero tolerance work place.

D.17 WRITTEN LOCAL COMPLAINT PROCESS:

Written Local Complaint Process – Any complaints regarding to this RFP are to be submitted in writing to: Vickie Pennington, at Pennyrile Allied Community Services, Inc. 1100 S Liberty Street Hopkinsville, KY 42241. If a Satisfactory response is not received within ten (10) business days, or a resolution cannot be reached with ten (10) business days, complaints and/or appeals can be filed in writing with the Office of Transportation Delivery (OTD) at: Kentucky Transportation Cabinet Office of Transportation Delivery ATTN: Eric Perez 200 Mero Street Frankfort, KY 40601.

D.18 NON-DISCRIMINATION ASSURANCE :

Non-discrimination assurance

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**APPENDIX F/ATTACHMENT D**

**Section 5311/5310/5307/5339**

**Subrecipient Agreement/Vendor Agreement/Bid Package**

**Federally Required and Model Contract Clauses**

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**TABLE OF CONTENTS (Appendix F - Governing Documents)**

**These Federally Required and Model Contract Clauses are for \_\_\_\_\_,  
hereinafter referred to as the Subrecipient.**

**A.1 - Federally Required and Other Model Contract Clauses**

1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements
6. Energy Conservation Requirements
7. Clean Water Requirements
8. Bus Testing
9. Pre-Award and Post Delivery Audit Requirements
10. Lobbying
11. Access to Records and Reports
12. Federal Changes
13. Bonding Requirements
14. Clean Air
15. Recycled Products
16. Davis-Bacon and Copeland Anti-Kickback Acts
17. Contract Work Hours and Safety Standards Act
18. [Reserved]
19. No Government Obligation to Third Parties
20. Program Fraud and False or Fraudulent Statements and Related Acts
21. Termination
22. Government-wide Debarment and Suspension (Nonprocurement)
23. Privacy Act
24. Civil Rights Requirements
25. Breaches and Dispute Resolution
26. Patent and Rights in Data
27. Transit Employee Protective Agreements
28. Disadvantaged Business Enterprises (DBE)
29. [Reserved]
30. Incorporation of Federal Transit Administration (FTA) Terms
31. Drug and Alcohol Testing
32. Certification of Compliance

## **1. FLY AMERICA REQUIREMENTS**

**49 U.S.C. § 40118**

**41 CFR Part 301-10**

### **Applicability to Contracts**

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

### **Flow Down Requirements**

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

### **Model Clause/Language**

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

### **Fly America Requirements**

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

## **2. BUY AMERICA REQUIREMENTS**

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

### **Applicability to Contracts**

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).

### **Flow Down**

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$150,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

### **Mandatory Clause/Language**

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11. The bidder or offeror must submit to Recipient the appropriate Buy America certification below with its bid or offer. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

When procuring rolling stock, which includes train control, communication traction power equipment, and rolling stock prototypes, the cost of the components and subcomponents in the U.S. be:

- more than 60 percent for FY2016 and FY2017
- more than 65 percent for FY2018 and FY2019
- more than 70 percent for FY2020 and beyond

Final assembly for rolling stock also must occur in the U.S. Additionally, rolling stock procurements are subject to the pre-award and post-delivery Buy America audit provisions set forth in 49 U.S.C. § 5323(m) and 49 CFR part 663.



**Certification requirement for procurement of steel, iron, or manufactured products.**

*Certificate of Compliance*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

*Certificate of Compliance*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j) and the applications regulations of 49 C.F.R. Part 661.11.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance*

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_

### **3. CHARTER BUS REQUIREMENTS**

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

**49 CFR Part 604**

#### **Applicability to Contracts**

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

#### **Flow Down Requirements**

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

#### **Model Clause/Language**

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

**Charter Service Operations** - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

### **3. SCHOOL BUS REQUIREMENTS**

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

**49 CFR Part 605**

#### **Applicability to Contracts**

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

#### **Flow Down Requirements**

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

### **Model Clause/Language**

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

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

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## **4. CARGO PREFERENCE REQUIREMENTS**

**46 U.S.C. 1241**  
**46 CFR Part 381**

### **Applicability to Contracts**

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

### **Flow Down**

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

### **Model Clause/Language**

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

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

Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## **5. SEISMIC SAFETY REQUIREMENTS**

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

### **Applicability to Contracts**

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

### **Flow Down**

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

### **Model Clauses/Language**

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

**Seismic Safety** - 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.

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## **6. ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.  
2 CFR Part 200**

### **Applicability to Contracts**

The Energy Conservation requirements are applicable to all contracts.

### **Flow Down**

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their sub agreements at every tier.

### **Model Clause/Language**

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

**Energy Conservation** - 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.

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## **7. CLEAN WATER REQUIREMENTS**

**33 U.S.C. 1251**

### **Applicability to Contracts**

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

### **Flow Down**

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

### **Model Clause/Language**

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements:

**Clean Water** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

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## **8. BUS TESTING**

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

**49 CFR Part 665**

### **Applicability to Contracts**

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

### **Flow Down**

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

### **Model Clause/Language**

Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

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

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

**CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS**

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

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

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

Signature: \_\_\_\_\_

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

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

\_\_\_\_\_



## **9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS**

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

**49 CFR Part 663**

### **Applicability to Contracts**

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

### **Flow Down**

These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

### **Model Clause/Language**

Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

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

-- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

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

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

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

*(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$150,000.)*

Certificate of Compliance

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

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

Signature: \_\_\_\_\_

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

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

Certificate of Non-Compliance

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

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

Signature: \_\_\_\_\_

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

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

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**10. LOBBYING**

**31 U.S.C. 1352**

**2 CFR Part 200**

**49 CFR Part 20**

**Applicability to Contracts**

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

**Flow Down**

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 2 CFR Part 200.

**Mandatory Clause/Language**

Clause and specific language therein are mandated by 2 CFR Part 200.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 2 CFR Part 200, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

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

#### APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

##### Certification for Contracts, Grants, Loans, and Cooperative Agreements

*(To be submitted with each bid or offer exceeding \$100,000)*

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

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

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

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

\_\_\_\_\_ Date

\_\_\_\_\_

## **11. ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325**  
**2 CFR Part 200.337**  
**49 CFR 633.17**

### **Applicability to Contracts**

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

### **Flow Down**

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

### **Model Clause/Language**

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 2 CFR Part 200.337 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 is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. 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 subgrantee of the FTA Recipient in accordance with 2 CFR Part 200.320, 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.

4. Where any Purchaser which is the FTA Recipient or a subgrantee 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.

5. 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.

6. 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 2 CFR Part 200.337.

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

## Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<b>I <u>State Grantees</u></b>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless <sup>1</sup> non-competitive award		Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<b>II <u>Non State Grantees</u></b>						
a. Contracts below SAT (\$100,000)	Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes <sup>3</sup>		Yes	Yes	Yes	Yes

Sources of Authority:

<sup>1</sup> 49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)



## 12. FEDERAL CHANGES

### 2 CFR Part 200

#### Applicability to Contracts

The Federal Changes requirement applies to all contracts.

#### Flow Down

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

#### Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

**Federal Changes** - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement 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.

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## 13. BONDING REQUIREMENTS

#### Applicability to Contracts

**For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:**

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

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

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than \$1 million;

(2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

#### **Flow Down**

Bonding requirements flow down to the first tier contractors.

#### **Model Clauses/Language**

FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

## **Bid Bond Requirements (Construction)**

### **(a) Bid Security**

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

### **(b) Rights Reserved**

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

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 (Subrecipient), 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 (Subrecipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

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 (Subrecipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Subrecipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Subrecipient) and pay over to (Subrecipient) the difference between the bid security and (Subrecipient's) total damages, so as to make (Subrecipient) 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 (Subrecipient) determines that a lesser amount would be adequate for the protection of the (Subrecipient).

2. The (Subrecipient) 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 (Subrecipient) 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:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million.

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) 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 (Subrecipient) 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 (Subrecipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Subrecipient) 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 (Subrecipient), 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.

(b) 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 (Subrecipient) determines that a lesser amount would be adequate for the protection of the (Subrecipient).

2. The (Subrecipient) 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 (Subrecipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

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

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

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million;

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) 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 (Subrecipient) shall determine the amount of the advance payment bond necessary to protect the (Subrecipient).

### **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 (Subrecipient) shall determine the amount of the patent indemnity to protect the (Subrecipient).

### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to (Subrecipient), 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 (Subrecipient), 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 (Subrecipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Subrecipient). 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 (Subrecipient) 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).

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**14. CLEAN AIR**

**42 U.S.C. 7401 et seq**

**40 CFR 15.61**

**2 CFR Part 200**

**Applicability to Contracts**

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

**Flow Down**

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

**Model Clauses/Language**

No specific language is required. FTA has proposed the following language.

**Clean Air** - (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.

## **15. RECYCLED PRODUCTS**

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

**40 CFR Part 247**

**Executive Order 12873**

### **Applicability to Contracts**

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

### **Flow Down**

These requirements flow down to all to all contractor and subcontractor tiers.

### **Model Clause/Language**

No specific clause is mandated, but FTA has developed the following language.

**Recovered Materials** - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

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## **16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

### **Background and Application**

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

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.



## Clause Language

### Davis-Bacon and Copeland Anti-Kickback Acts

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

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

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

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

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

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

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

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

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

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

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

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The

Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and

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

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

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

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3,

which are incorporated by reference in this contract.

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

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

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

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

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

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

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

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## 17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

### Background and Application

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 2 CFR Part 200, Appendix II. Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 2 CFR Part, Appendix II, the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3) (A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

### Clause Language

#### Contract Work Hours and Safety Standards

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

(3) **Withholding for unpaid wages and liquidated damages** - The Subrecipient 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 paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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**18. [ RESERVED ]**

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**19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

**Applicability to Contracts**

Applicable to all contracts.

**Flow Down**

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

**Model Clause/Language**

While no specific language is required, FTA has developed the following language.

**No Obligation by the Federal Government.**

(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.

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## **20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS**

### **AND RELATED ACTS**

**31 U.S.C. 3801 et seq.  
49 CFR Part 31 18 U.S.C. 1001  
49 U.S.C. 5307**

#### **Applicability to Contracts**

These requirements are applicable to all contracts.

#### **Flow Down**

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

#### **Model Clause/Language**

These requirements have no specified language, so FTA proffers the following language.

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

(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.

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## **21. TERMINATION**

### **2 CFR PART 200 FTA Circular 4220.1F**

#### **Applicability to Contracts**

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

#### **Flow Down**

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

#### **Model Clause/Language**

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

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

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the

(Subrecipient) 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 (Subrecipient) 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 (Subrecipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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

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

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

**f. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Subrecipient) may terminate this contract for default. The (Subrecipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

**g. Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Subrecipient) may terminate this contract for default. The (Subrecipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Subrecipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Subrecipient) 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 (Subrecipient).

**h. 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 (Subrecipient) may terminate this contract for default. The (Subrecipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

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

extended. The judgment of the (Subrecipient) 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 Recipient.

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

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

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

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

**j. Termination for Convenience or Default (Cost-Type Contracts)** The (Subrecipient) 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 (Subrecipient) 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 (Subrecipient), or property supplied to the Contractor by the (Subrecipient). If the termination is for default, the (Subrecipient) 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 (Subrecipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

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

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## **22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

### **Background and Applicability**

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

### **Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by Subrecipient. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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## **23. PRIVACY ACT**

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

### **Applicability to Contracts**

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

### **Flow Down**

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

**Model Clause/Language**

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

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

(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.

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**24. CIVIL RIGHTS REQUIREMENTS**

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

**Applicability to Contracts**

The Civil Rights Requirements apply to all contracts.

**Flow Down**

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.



### **Model Clause/Language**

The following clause was predicated on language contained at 2 CFR Part 200, but FTA has shortened the lengthy text.

**Civil Rights** - 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:

(a) 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.

(b) 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.

(c) 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.

(3) 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.

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## **25. BREACHES AND DISPUTE RESOLUTION**

**2 CFR Part 200  
FTA Circular 4220.1F**

**2 CFR Part 180.220 and 1200.220**

### **Applicability to Contracts**

All contracts equal to or in excess of \$25,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

### **Flow Down**

The Breaches and Dispute Resolutions requirements flow down to all tiers.

**Notification to FTA; Flow Down Requirement.** If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

### **2 C.F.R. §§ 180.220(b)–(c)**

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under §180.210, and the amount of the contract is expected to equal or exceed \$25,000.

(2) The contract requires the consent of an official of a Federal agency. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for Federally-required audit services.

(c) A subcontract also is a covered transaction if,—

(1) It is awarded by a participant in a procurement transaction under a nonprocurement transaction of a Federal agency that extends the coverage of paragraph (b)(1) of this section to additional tiers of contracts (see the diagram in the appendix to this part showing that optional lower tier coverage); and

(2) The value of the subcontract is expected to equal or exceed \$25,000.

#### 2 C.F.R. § 1200.220

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180).

**FTA Interest.** FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and Cabinet/FTA reserves the right to concur in any settlement or compromise.

**Notification to FTA; Flow Down Requirement.** If a current or prospective legal matter that may affect the Federal Government or State Government emerges, the Recipient must promptly notify the Cabinet. If a current or prospective legal matter that may affect the Federal Government emerges, the Cabinet must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which Cabinet is located. In addition, the Recipient must include a similar

notification requirement in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

1. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government or State Government as a party to litigation or a legal disagreement in any forum for any reason.

2. Matters that may affect the Federal Government or State Government include, but are not limited to, the Federal and/or State Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal and/or State Government’s administration or enforcement of federal and/or state laws, regulations, and requirements.

3. Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the Cabinet if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The Cabinet must notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and the Cabinet, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

**Federal Interest in Recovery.** The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA’s prior written concurrence.

**Enforcement.** The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

### **Model Clauses/Language**

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

**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 (Subrecipient)'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 (Subrecipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

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

## **26. PATENT AND RIGHTS IN DATA**

**37 CFR Part 401**

**2 CFR Part 200**

### **Applicability to Contracts**

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

### **Flow Down**

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

### **Model Clause/Language**

The FTA patent clause is substantially similar to the text of 2 CFR Part 200, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - This 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 2 CFR Part 200, 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.

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## **27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**

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

### **Applicability to Contracts**

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

### **Flow Down**

These provisions are applicable to all contracts and subcontracts at every tier.

### **Model Clause/Language**

Since no mandatory language is specified, FTA had developed the following language:

**Transit Employee Protective Provisions.** (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and

U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

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

### **49 CFR Part 26**

#### **Background and Applicability**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms

and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (*see* section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

### **Disadvantaged Business Enterprises**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is \_\_%. A separate contract goal **[of \_\_% DBE participation has] [has not]** been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Subrecipient deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

**[Bidders][Offerors]** must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).

*{If no separate contract goal has been established, use the following}* The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Subrecipient. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Subrecipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

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

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**29. [ RESERVED ]**

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**30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

**FTA Circular 4220.1F**

**Applicability to Contracts**

The incorporation of FTA terms applies to all contracts.

## **Flow Down**

The incorporation of FTA terms has unlimited flow down.

## **Model Clause/Language**

FTA has developed the following incorporation of terms language:

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, 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 Subrecipient requests which would cause Subrecipient to be in violation of the FTA terms and conditions.

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## **31. DRUG AND ALCOHOL TESTING**

**49 U.S.C. §5331**

**49 CFR Part 655**

## **Applicability to Contracts**

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

## **Flow Down Requirements**

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 655, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

## **Model Clause/Language**

### **Introduction**

FTA's drug and alcohol rules, 49 CFR 655, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

### **Explanation of Model Contract Clauses**

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 655. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 655, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

## **Drug and Alcohol Testing**

### **Option 1**

The contractor agrees to:

*(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR Part 655*

## **Drug and Alcohol Testing**

### **Option 2**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Kentucky, or the Subrecipient, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The contractor agrees further to certify annually its compliance with Part 655 before December 31 and to submit the Management Information System (MIS) reports before February 15 to the Drug and Alcohol Program Manager (DAPM). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

## **Drug and Alcohol Testing**

### **Option 3**

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Kentucky, or the Subrecipient, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR compliance with Parts 655 before December 31 and to submit the Management Information System (MIS) reports before February 15 to the Drug and Alcohol Program Manager (DAPM). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to (a) submit before December 31 a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt the Subrecipient's Policy Statement as its policy statement as required under 49 CFR 655; OR (c) submit for review and approval before December 31 a copy of its Policy Statement developed to implement its drug and alcohol testing program.

**32. CERTIFICATION OF COMPLIANCE**

The bidder hereby certifies that it will meet the requirements of the applicable regulations in these Model Clauses.

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

Signature: \_\_\_\_\_

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

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



## **F. Summary**

### **Short Summary of MINIMUM REQUIREMENTS of basic system in vehicle**

#### **PROPOSALS MUST MEET OR EXCEED MINIMUM SPECIFICATIONS**

**All digital video systems are to be installed on approximately 18-24 28' cutaway buses on a Ford E Series chassis with wheelchair lifts located in the passenger side near the rear of the vehicle and approximately 28-33 2015 or newer Ford Transit vans and minivan. The Ford Transit vans have the Wheelchair lifts in the rear of the vehicles.**

**Vehicles listed in the section titled "Vehicle Listing for Initial Installation" is a current but always changing vehicle listing and may change due to procurement of newer vehicles and many possible unknown circumstances. The list is intended as reference for proposal purposes.**

**The number of HD Day/Night Cameras necessary per vehicle is to be determined by the vendor but not to exceed 4 cameras. With the option to add additional cameras in the future if needed. It is our expectation the proposal will minimize the number of cameras needed by using newer technology such as 360 degrees, 180 degrees angle, zoom capable, wide-angle cameras, and extra wide-angle camera lenses to cover all required areas efficiently.**

**For required camera and audio coverage areas, see section titled Required Camera Coverage Areas.**

The On-Board video surveillance system shall record all the activities in the interior of the vehicle types and the exterior of the vehicles near the passenger steps, wheelchair lift, and out the front forward facing windshield view. The system shall record audio in the interior of the vehicle including discussion between the vehicle operator and someone outside near the boarding doors. The hardware shall support simultaneous recording of a minimum of two (2) independent channels. Audio channels shall be capable of synchronizing to cameras. The surveillance system shall be integrated with the DVR/on-board computer for tagging/embedding images or the vehicle ID, time and vehicle location. It should be able to withstand the vigorous conditions of the roads, dust, water and temperatures of Kentucky. The DVR should be ruggedized and secure with lockable recording media, and also be fire and tamper resistant. As an alternative, a lockable Fire-resistant metal case is acceptable. The system should be made of entirely new materials. The DVR shall be configured for enough HD cameras to meet or exceed the explicit coverage specification for each vehicle type in this proposal. The DVR shall support HD color, Day/Night cameras.

The systems primary data storage device shall be a 2.5" Hard Drive of 1 Terabyte or more. If the proposed hard drive is not solid state, an alternative solid-state backup system such as an SD, SDHC or SDXC card of no less than 256G Class 10 (speed) are acceptable. The solid state back up card must be included and installed into the completed system. The system shall supply protection for event /alarm/triggers. The vendor shall supply all parts, connections, wire, hardware, software, firmware, wiring harnesses, and any other peripherals. All systems must be completed and working properly after each installation.

# DIGITAL VIDEO RECORDING SYSTEM SPECIFICATION & BASIC SCOPE OF WORK

**The specifications set forth in this proposal are Minimum Specifications.**

**THE RFP MUST MEET OR EXCEED MINIMUM SPECIFICATIONS**

## G.1 Basic Scope of Services

The contractor shall perform all work detailed in this solicitation, unless otherwise specified. The specified work includes furnishing all materials, tools, equipment, transportation, supervision and performing all labor and services necessary and incidental designing, installing, and testing. The contractor's work is to include, but is not limited to the following:

- a. Performing a complete installation of specified systems, sub systems and components, including training of PACS Operations and Maintenance staff to operate and maintain the systems.
- b. Performing qualification and performance testing as well as provide configuration verification upon completion.
- c. Providing the illustrated parts catalog and maintenance catalog in an acceptable electronic format. In addition, PACS must be granted access to any updated maintenance or operational manuals, parts list, special tools, lists related to the installed system.
- d. Clean up and disposal of all unused packaging, waste, consumables, disposables or other debris created in relation to this project. Including removal of scrap wire pieces from inside each vehicle.
- e. Installation of systems at 1200 S Clay Street Hopkinsville, KY. PACS will be responsible for making vehicles available and onsite based upon an agreeable schedule between both the vendor and the purchaser. See item H.
- f. Winning proposal shall be responsible for delivery of spare parts as specified and administering warranty
- g. Provide special tools and diagnostic equipment for new and upgraded systems.
- h. The completed installation should record audio of all activities in the interior of the vehicle, including discussion between the vehicle operator and someone outside near the boarding doors.
- i. The Audio may be collected by cameras with internal microphones or separate external microphones. The audio should have noise canceling and windscreen solutions. No audio is required if exterior cameras installed.
- j. If necessary, for viewing and saving video and audio on a PC, the system shall have five (5) hard drive docking stations including all software, hardware, firmware, cord, cables, and accessories necessary to

allow for transferring video and audio from the hard drive to a personal computer. The images shall be capable of being printed, emailed or saved to another storage device.

## **G.1.2 SYSTEM**

- a. The system must provide video coverage of persons entering the passenger door, the driver, the fare payment area (area around driver), and all other passengers and aisles
- b. The system must provide video and audio coverage of persons in the wheelchair securement area, the occupied or unoccupied wheelchair lift throughout its entire operating range.
- c. The system must provide video and audio coverage of the view out of the front windshield with a minimum of 107 degrees horizontal field of vision.
- d. The system must provide video and audio coverage of persons boarding the vehicle using the passenger steps.
- e. The system must provide video and audio coverage of persons boarding the vehicle using the wheelchair lift as well as the operator of the wheelchair lift.
- f. The system must provide video and audio coverage of the curb side of the vehicle.
- g. It is preferred the systems primary data storage device be a 2.5" solid state Hard Drive of 1 Terabyte or more. The primary hard drive must be a 2.5" hard drive. If the proposed hard drive is not solid state, an alternative solid state backup system such as an SD, SDHC or SDXC card of no less than 256G Class 10 (speed) are acceptable. The solid state back up card must be included and installed into the completed system.
- h. The system must utilize the latest technology, a minimum of H.264 High Profile Video compression to store the largest amount of video. MPEG video compression is not acceptable.
- i. The system shall be capable of recording at no less than 1080p High Definition video quality per camera.
- j. The system shall be capable of recording all cameras simultaneously at the maximum quality and frame rate. Switching systems are not acceptable
- k. The system must be capable of onboard viewing, downloading and control via laptop, tablet or proprietary onboard device. A system may also be capable of the same via smart phone or wireless connection.
- l. The system shall have all connectors be a locking type to prevent disconnection due to shock, vibration, unauthorized user, etc.

- m. All equipment, modules, mounting hardware and connectors shall be designed to withstand the full range of operating environments found in the areas in which they are to be installed and shall not interfere with the operation of existing or future equipment.
- n. The system, must be designed to operate normally in a temperature range of -20 degrees F to 122 degrees F.
- o. Each connector in a given physical location shall be keyed/marked or otherwise configured as to prevent inadvertent wiring during installation, maintenance or replacement.
- p. Each component/module/subsystem distinctly defined in these specifications shall be replaceable as a discrete unit.
- q. Each component/module/subsystem distinctly defined in these specifications shall be electronically identified by a unique serial number.
- r. Audio level must be adjustable or preconfigured for optimal settings that best support high quality recording in transit applications.

### **G.3 MOBILE DIGITAL RECORDERS SPECIFICATIONS (DVR)**

- a. The hardware must support simultaneous audio recording of a minimum of 2 (two) independent audio channels and be capable of synchronizing to cameras.
- b. The DVR must be capable of simultaneously recording on Hard Drive and back up media if Solid State Hard Drive is not used.
- c. The DVR shall be capable of simultaneous recording all cameras at a 720p at 30 fps or 1080p at 15 fps. Either are acceptable.”
- d. The DVR shall be capable of configuring video quality, resolution and recording speed (bit rate and frame rate) individually for each camera.
- e. The DVR shall have a multi-function status indicator for simple operation diagnostics. This indicator may be on the DVR or on an external health monitor/status indicator, but it must be easily viewed without keys or tools to identify proper functionality. Buzzers or audio alerts are not acceptable.
- f. The DVR shall utilize positive locking connectors for all connections.
- g. The DVR should be ruggedized and secure with lockable recording media, and also be fire and tamper resistant. As an alternative, a lockable Fire-resistant metal box is acceptable.
- h. The system shall include a driver event switch or button easily activated by the driver while seated in the driver seat and while operating the vehicle. Buzzers and audio alerts are not acceptable.
- i. The DVR shall connect to a PC or laptop via a USB port or LAN Ethernet port to perform data exchange over a secured connection with external devices such as a laptop, or tablet. All PC's will be provided by PACS.
- j. The DVR shall be capable of heating or cooling itself to prevent damage and to assist it to operate normally within its specified operating range or temperatures.
- k. The DVR must be FCC approved and operate on 12 or 24 VDC vehicle power supply connected with to protect from overvoltage, transients, and reverse polarity operating between 8VDC and 30VDC.
- l. The DVR must meet or exceed the requirements of ISO 7637-2 “Electrical disturbances from conduction and coupling” (or equivalent). The DVR shall provide regulated at minimum 5 volt and 12 volt power to all peripherals.
- m. The DVR shall provide a power supply to protect against over voltage, transients, and reverse polarity.
- n. The DVR shall provide a low voltage cut off with an automatic restart upon return of power that is within the normal operating range.

- o. The DVR must meet or exceed the requirements of being Mil-Spec Rated STD-810F and SAE Rated J1455 for vibration.
- p. All data inputs and outputs, whether serial or parallel, shall be protected against over-voltage and reverse polarity. This protection shall be designed to absorb "routine" over-voltages and reverse polarity conditions, and to open respective circuits in the event of "extraordinary" conditions, sacrificing inexpensive and easily identifiable components when necessary to protect more expensive components or those that are less easy to troubleshoot.
- q. The DVR must be capable to remain operating for a pre-determined length of time after the vehicle ignition is turned off. The time to remain running shall be programmable or selectable.
- r. The DVR shall provide system wake up to turn itself on even when the vehicle ignition is powered on.
- s. The DVR shall be capable of pre-event recording and protection of post event video recordings for a pre-determined length time upon activation of a trigger. The alarm/event video may be recorded on to 2 separate storage devices as an alternative.
- t. The DVR shall have audio/HD Video outputs easily accessible for an authorized user.
- u. The DVR shall have an easily accessible memory access port for a removable copy of alarm/events video. System may offer a USB port to copy events to a memory stick but must include a LAN Ethernet port (RJ45-10-100-1000 Base T or newer). The ports must be easily accessible to an authorized user so a laptop can be connected, and video can be saved to its drive. The video shall use h.264 compression or better for all channels. The DVR may also provide a wireless connection available in addition to the LAN/Ethernet port.
- v. The DVR shall provide selectable resolution with a minimum of 3 settings. While higher settings are preferred, the minimum settings are 352 x 240, 720 x 240, and 720 x 480, all on channels simultaneously.
- w. The DVR shall provide resolution, frame rate and quality settings configurable independently for each video channel.
- x. The DVR must be capable of being set to a specific time zone and automatically adjust for Daylight Savings Time at the proper times.
- y. The DVR may provide automatic overwrite (FIFO) to the storage device but not overwrite events marked as events or triggers less than 14 days from saving the event/trigger.
- z. The DVR shall provide alarm events tagging to provide fast access to alarm events during playback.
- aa. The DVR must have no less than six (6) trigger inputs for connection to vehicle signals for data recording and alarm/event detection. Examples include turn signals hard braking, hard turning, collision, acceleration, etc.

- bb. The sensor inputs shall have individually configurable sensor input names as well as common presets. The sensors shall be individually configurable as marked events or protected alarms.
- cc. The DVR shall provide vehicle data, including inputs, speed, acceleration, and GPS coordinates always stored continuously with video.
- dd. The DVR shall provide minimally, 7 selectable frame rates: User selectable between 1 and 30 frames per second per channel minimal.
- ee. The DVR shall provide a minimum of 4 selectable quality settings on each channel.
- ff. The DVR shall provide full quality or increased video quality on event or alarm occurrence.
- gg. The DVR shall provide time stamp, vehicle ID, camera names, and vehicle data permanently embedded into video data as metadata. No video shall be permanently obscured by text and should allow viewing of the video without blocking it.
- hh. The DVR shall provide audio, video, and vehicle data stored fully synchronized in an encrypted or proprietary tamper resistant file format with no known editing method to ensure the integrity of the video evidence chain of custody.
- ii. The DVR shall have the capacity to update firmware, with USB port or LAN Ethernet Port, connected to a laptop or tablet.
- jj. The DVR firmware updates shall be provided at no charge to allow PACS to have the most current and stable operation, allowing expandability with future products.
- kk. The DVR must have the capability of password protection to change the settings.
- ll. The DVR shall have an external or integrated 3 or higher with a minimum of 6G accelerometer/inertia sensor for automatic data recording and detection of hard braking, accident detection, hard turns, fast acceleration etc., based on preset triggers.”
- mm. The accelerometer shall allow each axis to be individually configurable for G force threshold. The configuration may be manual or automatic calibration.
- nn. The accelerometer may be automatically calibrated or may allow for calibration (zeroing) of the unit after installation.
- oo. The built in DVR clock-calendar shall include an internal five (5) year or more clock battery for accurate time keeping even when removed from the vehicle or the vehicle battery is disconnected or inoperable.
- pp. The built in DVR clock-calendar shall provide an embedded time stamp recorded with video as metadata that does not obscure video.
- qq. The built-in clock-calendar shall provide automatic Daylight savings Time adjustment.

- rr. The DVR shall have video loss detection for all cameras. A health event status indicator that just identifies there is an issue with a camera is acceptable. An audio buzzer is not acceptable.
- ss. The DVR system shall detect hard drive faults.
- tt. The DVR shall provide an easy means to determine firmware versions and available hard drive space.
- uu. If needed for proper operation, the DVR system shall provide any output module, software package, or proprietary device in order to provide status and fault reporting to third party systems such as a laptop or tablet.
- vv. The DVR system shall have an operating temperature range of at least -20 degrees F to 122 degrees F.
- ww. The DVR shall be configured to synchronize time from the GPS unit.
- xx. The DVR shall be able to utilize a GPS receiver to get data that includes no less than latitude, longitude, speed and time.



## G.4 Hard Drive Module Minimum Specifications

- a. The hard drive module shall be removable but secured and tamper resistant when installed in the DVR and shall have a minimum of 1TB capacity available.
- s. It is preferred the systems primary data storage device be a 2.5" solid state Hard Drive of 1 Terabyte or more. The primary hard drive must be a 2.5" hard drive. If the proposed hard drive is not solid state, an alternative solid-state backup system such as an SD, SDHC or SDXC card of no less than 256G Class 10 (speed) are acceptable. The solid state back up card must be included and installed into the completed system.
- b. The hard drive shall be removable to allow the playback of recorded video on a docking station if required, or through USB or LAN Ethernet connection on a PC. Any other required connection methods require all additional supplies and devices to be supplied by the vendor.
- c. The hard drive housing shall be constructed of metal. (SD, SDHC or SDXC cards excluded)
- d. All storage media shall be swappable for use in any same model DVR regardless of the number of cameras supported.
- e. The hard drive module or DVR shall have an integrated heater/cooler for operation down to -20 degrees Fahrenheit and should also operate up to 121 degrees Fahrenheit.
- f. The hard drive(s) shall be secured in the DVR to prevent tampering. If the hard drive is not lockable, the DVR must be secured in a tamper proof, fire retardant, metal box. All keys shall be keyed the same and two (2) sets of keys shall be provided for each installed unit. An Additional hard drive for each to replace if one must be removed for any reason.
- g. No videotapes or video tape shall be used.

## G.5 Viewing Software

- a. The viewing software shall be included in the system price at no extra charge.
- b. All future software updates shall be included free of charge
- c. The viewing software must have a timeline to show times of recordings for all installed cameras.
- d. The viewing software must easily allow the playback for all installed cameras simultaneously.
- e. The viewing software must easily allow the user to select the audio track independent from the video.
- f. The viewing software must easily allow playback of a video in a single camera, two cameras, quad screen or all camera at once.
- g. The viewing software must display vehicle ID, date, time, event triggers, GPS information and speed.
- h. The viewing software must display the video files time, date and vehicle ID.
- i. The viewing software must display the date, time, vehicle ID of each event/alarm trigger.
- j. The viewing software must easily allow the fast forward playback at different speeds with 16x normal playback speed being the minimum fastest speed.
- k. The viewing software must easily allow the slow-motion playback of video at variable speeds with 1/8 of normal playback speed being the maximum slowness of the slow motion playback speeds. Frame by frame is preferred as the minimum.
- l. The viewing software must easily be able to be copy the currently viewed video to the computer.
- m. The viewing software must easily allow multiple selected video files to be easily.
- n. The viewing software must easily allow a still image to be saved as an image file such as JPEG, GIF, BPM, AVI or a proprietary file based on the winning vendor's software.
- o. The viewing software must easily allow a still image with integrated GPS map to be saved as an image file such as JPEG, GIF, BPM, AVI or a proprietary file based on the winning vendor's software.
- p. The viewing software must allow the selection of a single day of video and the playback of all videos consecutively from that selected day.
- q. The viewing software must easily allow a search for video by a specific time and date.
- r. The viewing software must easily allow video to be played from a timeline for a selected day.
- s. The viewing software must easily allow the selection of individual channels of available audio.
- t. The viewing software must easily allow playback of video with the GPS map of the vehicle location integrated with the video with a properly connected internet connection.
- u. The viewing software must allow the user to skip within each clip to the desired frame.
- v. The viewing software must easily allow video playback in a full screen mode with controls.
- w. The viewing software must easily allow a single camera view to be selected from multi-camera view to be selected and then video playback in full screen mode with controls.
- x. The viewing software must easily allow the viewing of all alarm video (triggered video) for a selected day.
- y. The viewing software must easily allow the viewing of all system functions performed by the DVR.
- z. The viewing software must operate on Microsoft Windows 10 or newer.

- aa. The video playback software shall correlate video segments with their corresponding location on the GPS map such that the location of the event/alarm video will be noted on the map and clicking on the alarm map segment will display the appropriate video for the alarm.
- bb. The video playback software shall provide for GPS mapping and search integration. The ability to click and point within the displayed location/route/bread crumb trail and have the software playback system go directly to the associated recorded video and start playing shall be included as part of the software package.
- cc. The video playback software shall provide for information display inputs (brakes/lights etc.), ignition on/off, company name, vehicle ID, acceleration, GPS coordinates, vehicle speed, system voltage, temperature, or Hard Drive temperature.
- dd. The video playback software shall provide for saving a video clip in a proprietary file format that saves all audio/video channels and vehicle data in a single file, manual or graphical time/date range selection, automatic or user configured file name and/or location in a proprietary and tamper resistant file.
- ee. The video playback software shall provide for an easy conversion and export of an AVI, WVM, or MP4 file along including metadata (GPS, etc.).
- ff. The video playback software shall provide a blur tool to easily blur the video for passenger privacy. Blur capability shall be available in all channels of video playback software and shall have the ability to be used in one or all video channels simultaneously.

## G.6 Cameras Information

**The number of HD Day/Night Cameras necessary per vehicle is to be determined by the vendor but not to exceed 4 cameras. It is our expectation the proposal will minimize the number of cameras needed by using newer technology such as 360 degrees, 180 degrees angle, zoom capable, wide-angle cameras, and extra wide-angle camera lenses to cover all required areas efficiently. With the option to add additional cameras in the future if needed.**

**For required camera and audio coverage areas, see section titled “Required Camera Coverage”**

- a. All cameras must be HD and have capability of recording up to 1080p.
- b. All cameras must use progressive scan high resolution CMOS image sensor no less than 2 mega pixels.

- c. A windshield front facing HD camera shall have a wide-angle lens of no less than a 107 degree field of view and capture color video at a high resolution.
- d. Interior forward facing HD camera (out front windshield) shall be of the type that does not produce a glare off the windshield, thus degrading the purpose of the front facing HD Camera. Cameras that produce IR glare off the windshield are not acceptable.
- e. Interior forward facing camera bracket must be adjustable after installation for a minimum of 90-degree vertical aim adjustment to provide the best view out the windshield regardless of windshield angle and weather.
- f. The internal cameras may switch from color to monochrome images if needed to maintain facial recognition in low light.
- g. All interior cameras shall be rated IP 64 or higher.
- h. The rear vision camera shall be rated IP 66 or higher for ingress protection.
- i. The final camera locations and lens angles shall be approved in consultation with and approved by PACS in accordance with the specifications. IT IS A REQUIREMENT OF THIS PROPOSAL TO PROVIDE A DRAWING OR WRITTEN DESCRIPTION OF EACH CAMERA LOCATION AND CAMERA MODEL.
- j. Vendor may be asked demonstrate camera views and quality of video before awarding contract
- k. All cameras shall be operational, and no decoy cameras are acceptable.
- l. All cameras shall be of the type needed to recognize and/or identify a person, place or thing within the PACS specified area for each camera.
- m. The Cameras shall be installed so that there are no “blind spots” within the interior of the vehicle. No “Blind Spots” refer to areas of action involving individuals either standing or seated. Underneath fixed passenger seats and underneath driver seats are excluded from this specification.
- n. All cameras shall automatically compensate for sudden bright or dark images, so as to allow facial recognition in ambient illumination conditions ranging from 0.05 and 100,000 lux, including at least the following features. (1) automatic iris aperture adjustment; (2) automatic shutter speed adjustment; (3) automatic gain control; (4) automatic level control; (5) automatic white balance; (6) backlight compensation or newer technology.
- o. Cameras that have backlight compensation control or equivalent technology shall have backlight compensation control or equivalent technology that adjusts automatically.
- p. All cameras shall operate over the entire operating range of the voltage provided by the vehicle DC power.
- q. All internal cameras shall have vandal resistant polycarbonate or coated aluminum housing.

- r. Cameras shall be housed in enclosures that cannot be opened with standard hand tools.
- s. The cameras must be tampering resistant, scratch resistant, have no exposed wires and mounted securely to the vehicle surfaces.
- t. Cameras shall turn on automatically when the vehicle power supply is turned on and shall shut down with a programmable timer after the vehicle is turned off.
- u. The cameras shall be connected to DVR with appropriate cable/wire/connections to send the HD signal to DRV. All connections shall have a locking connector to prevent disconnection from normal use and vibration in rural transportation. No connectors shall be accessible to the passenger or driver.
- v. The interior cameras shall be mounted inside the vehicle with enough overhead clearance from the vehicle floor to the bottom of the camera to allow passengers to walk and move freely within the vehicle.
- w. Cameras shall be at a minimum, designed to operate in accordance with these specifications for ambient temperatures from – 4 F to 121 degrees F.
- x. Exterior cameras shall be at minimum, designed to operate in accordance with these specifications for ambient temperatures from – 40 F to 121 degrees F (if installed).
- y. Interior cameras shall be designed to operate in accordance with these specifications as a minimum for ambient humidity from 5 percent to 95 percent non-condensing.
- z. Cameras shall be designed to withstand the vibration and shock forces associated with demand response vehicles used in rural transportation, including maintaining the lens adjustment(s).
- aa. Cameras shall be modular, with sensitive components sealed.
- bb. Cameras shall conform to FCC part 15 Class B limits for conducted and radiated emissions of electromagnetic interference.
- cc. Cameras shall be capable of withstanding power transients and radio frequency interference without degradation at levels that are known to exist in ordinary transit applications.
- dd. Interior view cameras must have built in automatic night vision IR LED' (on newer technology) for low light illumination.
- ee. All HD exterior waterproof cameras must have built in automatic night vision IR LED's (on newer technology) for low light illumination.
- ff. Exterior HD waterproof cameras should have a low profile extending from the vehicle no more than 3.5" after installation (If installed).
- gg. All cameras must have a lens that can be adjustable after installation that allow enough adjustability to refocus the areas of the intended use of the specific camera.

## G.7 Required Camera Coverage Areas

**SUMMARY:** The On-Board video surveillance system shall record all the activities in the interior of the both vehicle types and the exterior of the vehicles near the passenger steps, wheelchair lift, and provide curb side video of the vehicle clearance. The system shall record audio in the interior and exterior of the vehicle including discussion between the vehicle operator, on board passengers and someone outside near the boarding doors.

- a. The Cameras shall be installed so that there are no “blind spots” within the interior of the vehicle. No “Blind Spots” refer to areas of action involving individuals either standing or seated. Underneath fixed passenger seats and underneath driver seats are excluded from this specification.
- b. The system must provide video coverage of persons entering the passenger door, the driver, the fare payment area (area around driver), and all other passengers including any aisles.
- c. The system must provide video and audio coverage of persons in the wheelchair securement area, the occupied or unoccupied wheelchair lift throughout its entire operating range.
- d. The system must provide video and audio coverage of the view out of the front windshield with a minimum of 107 degrees horizontal field of vision.
- e. The system must provide video and audio coverage of persons boarding the vehicle using the passenger steps.
- f. The system must provide video and audio coverage of persons boarding the vehicle using the wheelchair lift as well as the operator of the wheelchair lift.

## G.8 GPS

- a. The GPS may be a standalone system or preferred built into the DVR.
- b. The GPS receiver shall be a minimum of 12A 12 channel unit.
- c. The GPS receiver shall provide a standard NMEA data output interface format to the DVR.
- d. The DVR shall record latitude, longitude and speed from the GPS receiver antenna unit.
- e. The DVR shall be configured to synchronize time from the GPS unit.
- f. The DVR shall be able to utilize a GPS receiver to get data that includes no less than latitude, longitude, speed and time.
- g. The GPS receiver shall have the ability to trigger an event by driving beyond a preset GPS coordinate geo-fence or by exceeding a preset speed limit.

- h. The DVR unit shall be able to synchronize the DVR's system time by satellite using the GPS receiver.

## **G.9 Docking Station**

To properly view a hard drive already removed from a vehicle DVR, the contractor shall provide Five networkable (5) docking stations that will accommodate reading the hard drive video, audio and data allowing any authorized user to access the Docking station from any PC within the agency's WAN that is configured with the proper software to view and save the video, audio and data.

Once the hard drive is inserted into a docking station, the user shall be able to review any/all stored data on the hard drive.

## **G.10 Miscellaneous**

- a. The vendor shall provide five (5) warning stickers for the interior of each vehicle.
- b. Each warning sticker shall indicate that video AND audio may be recording.
- c. The winning proposal shall install 2 of the warning stickers per vehicle and PACS will keep the balance of the stickers on hand for replacements.
- d. The stickers shall be installed in locations with the approval by the PACS Transportation Operations Manager or PACS appointed Project Manager.
- e. The proposal shall supply a current price list of current common replacement parts including hard drives.

## **G.11 System Warranty and Support**

- a. The system and accessories must be warranted for no less than 5 years. Vendor may build in the cost of warranty into the per unit price but not as a separate cost.
- b. The system must include toll free access to customer support by the system manufacturer. Online resources and troubleshooting information may also be provided online as an additional resource.
- c. Technical Support provided by phone and online shall be provided at no charge.
- d. Any defective parts or components that need to be shipped back to the manufacturer/winning vendor for repair or replacement must be shipped to an address in the United States.

## H. Vehicle Installation Guidelines and Location

All installations will take place in a metal building/warehouse located at;

Pennyrile Allied Community Services, Inc.

1100 S Liberty Street

Hopkinsville, KY 42241.

The winning proposal will have 24-hour access to the building excluding Sundays and the following holidays:

New Year's Day

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Day After Thanksgiving

Christmas Eve

Christmas Day

The building has electricity and lighting. PACS building is heated and has industrial fans during warm weather.

A water source is located just outside of the warehouse.

PACS personnel will be rotating vehicles into and off the worksite for the winning proposal. PACS will commit to providing four (4) vehicles a day. Weather and other unknown factors may affect this goal, but a good faith effort will always be made. An appointed representative of PACS will work closely with the winning proposal and will communicate closely with the winning proposal appointed Project Manager to make sure the vehicles are rotated in an efficient manner that will not disrupt normal BUS operations.

All installations shall be done in a professional manner and appear to anyone that the systems are installed professionally with no exposed wires, connectors, stripped screws, and non- flush mounting.

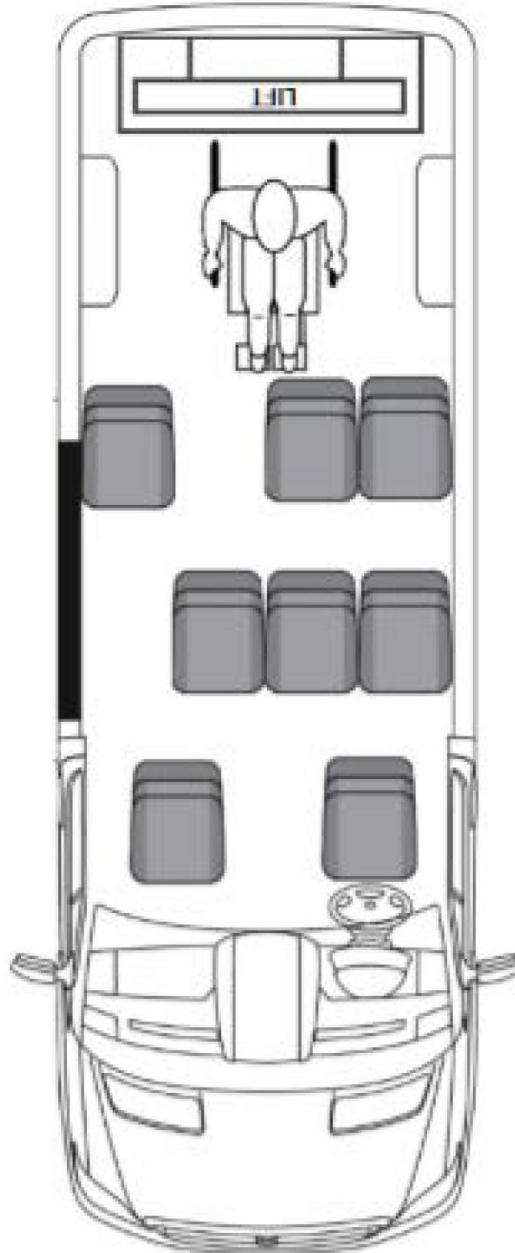
All trash and scraps must be disposed of properly and each vehicle shall be free of scraps, wires, packaging etc., upon completing each installation.

All panels or parts of the vehicle that are dismantled, removed, moved or altered for installation, shall look professional and in as original condition as possible upon completion.



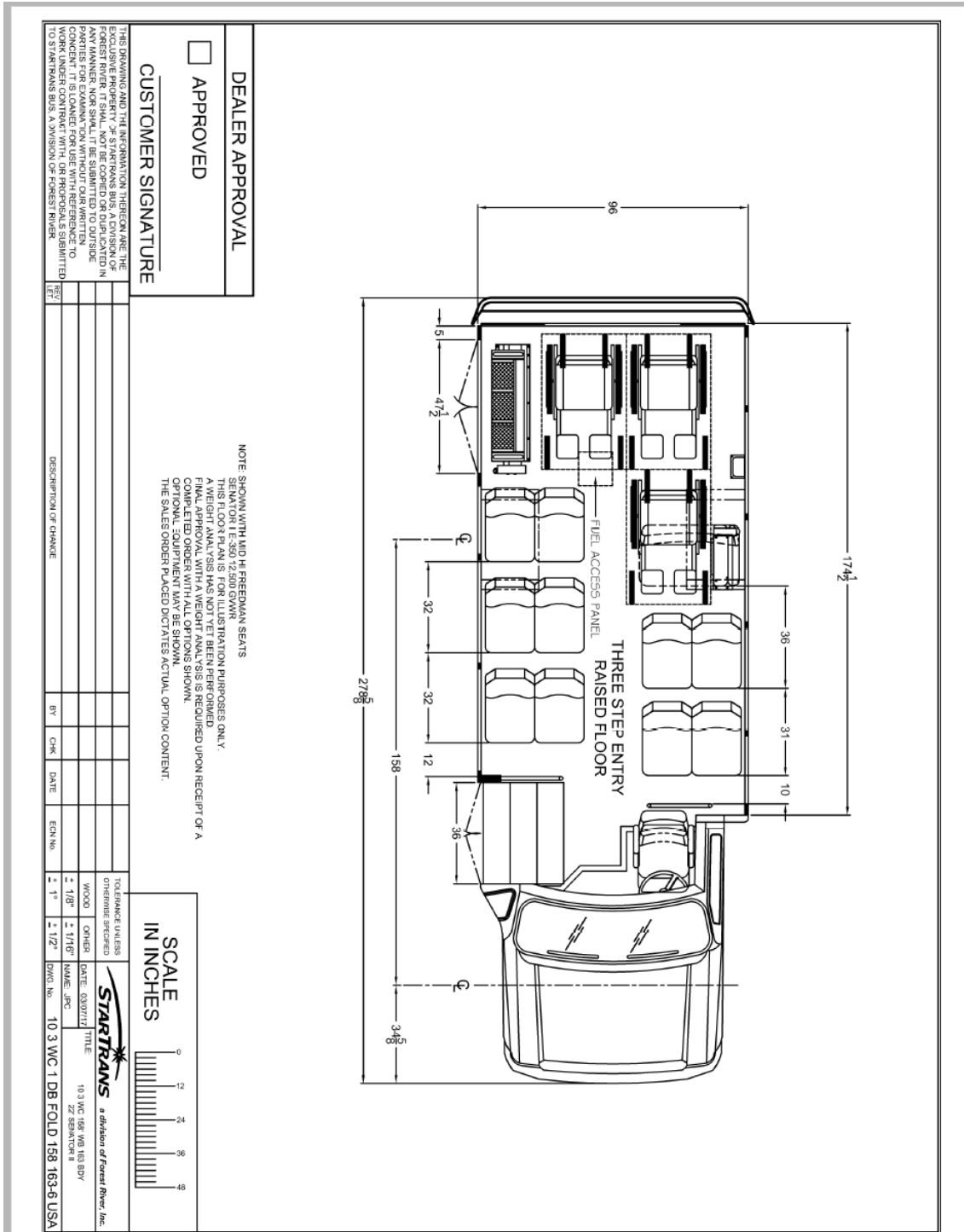
## I.1 Approximate vehicle floor plan for plan for Ford Transit Vehicles

The floorplan is attended as only a sample representation for the Ford Transit vehicles and does not represent the exact floorplans or dimensions of every vehicle.



## I.2 Approximate vehicle floor plan for plan for Ford E Series.

The floorplan is attended as only a sample representation for the Ford E Series vehicles and does not represent the exact floorplans or dimensions of every vehicle.



### I.3 Vehicle listing for initial installation

**All digital video systems are to be installed on approximately 28' cutaway buses on a Ford E Series chassis and 2015 or Newer Ford Transit vans or smaller minivan vehicles.**

**Future purchase options may include other smaller not yet specified vehicles with a factory installed Rear Vision camera system.**

**Actual vehicles listed may change due to new procurement and many possible unknown circumstances.**

UNIT#	LOCATION SERVED	YEAR	MAKE	MODEL	MAX. PASS. CAPACITY	MAX. W/C CAPACITY	CURRENT MILEAGE
10	Christian	2014	Ford	E350	12	2	183555
18	Christian	2011	Ford	E350	12	2	172315
56	Muhlenberg	2013	Ford	E350	12	2	195215
165	HOPKINS	2015	Dodge	CARAVAN	5	2	111,021
166	Christian	2015	Dodge	CARAVAN	5	2	111,561
167	Muhlenberg	2015	Dodge	CARAVAN	5	2	149,713
202	HOPKINS	2016	Ford	Cutaway Bus	12	2	169,085
203	Christian (IC)	2016	Ford	Cutaway Bus	12	2	112,202
205	Christian (IC)	2016	Ford	E350	12	2	146,151
206	Christian (IC)	2016	Ford	E350	12	2	102,694
213	Christian	2017	Dodge	CARAVAN	5	2	48,376
214	Christian	2017	Dodge	CARAVAN	5	2	49,120
215	Muhlenberg	2017	Dodge	CARAVAN	5	2	139,229
216	Crittenden	2017	Dodge	CARAVAN	5	2	113,391
217	Muhlenberg	2017	Dodge	CARAVAN	5	2	118,555
218	Muhlenberg	2017	Dodge	CARAVAN	5	2	113,541
219	HOPKINS	2014	Dodge	CARAVAN	5	2	175,026
220	Muhlenberg	2017	Dodge	CARAVAN	5	2	132,142

221	HOPKINS	2017	Dodge	CARAVAN	5	2	74,659
222	HOPKINS	2018	Ford	Cutaway Bus	12	4	142,592
223	Muhlenberg	2018	Ford	Cutaway Bus	12	4	167,882
224	Christian	2018	Dodge	CARAVAN	5	2	30,285
225	Crittenden	2018	Dodge	CARAVAN	5	2	55,413
226	Muhlenberg	2018	Dodge	CARAVAN	5	2	56,014
227	Muhlenberg	2018	Dodge	CARAVAN	5	2	48,416
228	HOPKINS	2018	Dodge	CARAVAN	5	2	45,538
229	Muhlenberg	2018	Dodge	CARAVAN	5	2	62,160
230	HOPKINS	2019	Ford	Cutaway Bus	12	2	80,506
231	Crittenden	2019	Ford	Cutaway Bus	12	2	73,444
232	Crittenden	2019	Ford	Cutaway Bus	12	2	58,125
233	Crittenden	2019	Dodge	CARAVAN	5	2	23,151
234	HOPKINS	2019	Dodge	CARAVAN	5	2	26,685
237	Christian	2019	Ford	Cutaway Bus	12	2	48,069
238	HOPKINS	2019	Ford	Cutaway Bus	12	2	48,412
239	HOPKINSVILLE	2019	Ford	Cutaway Bus	12	2	135,671
240	HOPKINSVILLE	2019	Ford	Cutaway Bus	12	2	123,844
HO1	HOPKINSVILLE	2015	Ford	Cutaway Bus	12	2	271,020
HO2	HOPKINSVILLE	2015	Ford	Cutaway Bus	12	2	284,751
HO3	HOPKINSVILLE	2016	Ford	Cutaway Bus	12	2	291,162
M1	MADISONVILLE	2017	Ford	Cutaway Bus	12	2	216,659
M2	MADISONVILLE	2016	Ford	Cutaway Bus	12	2	222,688
241	MADISONVILLE	2019	Ford	Cutaway Bus	12	2	126,462
245	HOPKINS	2019	FORD	TRANSIT	8	1	44,654
246	Christian	2019	FORD	TRANSIT	8	1	70,135
247	CALDWELL	2019	FORD	TRANSIT	8	1	44,866
248	Christian	2019	FORD	TRANSIT	8	1	61,788
400	Muhlenberg	2019	Dodge	CARAVAN	5	2	22,551
401	Muhlenberg	2019	Dodge	CARAVAN	5	2	18,812
402	LYON	2019	Dodge	CARAVAN	5	2	13,185
403	Christian	2019	FORD	TRANSIT	8	1	36,335
405	HOPKINS	2019	FORD	TRANSIT	8	1	22,431
406	Christian	2021	Ford	Cutaway Bus	12	4	20,267
407	CALDWELL	2021	Ford	Cutaway Bus	12	4	38,650

## J.1 Training

**The contractor shall provide a minimum of the following training:**

- a. User Training: The contractor shall conduct training for up to Ten (10) individuals on the software including the following capabilities: Configuration of DVR via the software, management of multiple configuration files, and analysis of video via the software. This training shall take place at PACS before final acceptance of completion.
- b. Maintenance Training: The contractor shall train up to (10) individuals on the maintenance of the video equipment. This training shall include the following: Diagnosing issues with DVR, hard drive, cameras, electrical system, health monitor system, swapping of hard drives, removal and replacement of DVR, hard drives, camera equipment, any other modular equipment and the Return Material Authorization process. This training shall take place at PACS before final acceptance of completion.
- c. The contractor will train up to five (5) designated employees on the management and managerial user settings for the complete software and hardware system. This training shall take place at PACS before final acceptance of completion.

# Appendix A: CHECKLIST

## RFP Checklist of Required Documents and Signatures

This checklist SHALL be completed and signed along with the required items listed on this page and shall be sent to PACS with the RFP submittal based on the item descriptions below.

### **Send ASAP Prior to RFP Closing Date**

\_\_\_\_\_ Complete and sign the Confirmation of Receipt found on page two (2) and return ASAP. This allows PACS to send any addendums and answers to questions to you in a timely manner.

\_\_\_\_\_ Request Proposal Form found in Appendix C on pages 96-97 which includes assurance the proposer is not “debarred from Federal or State projects.

### **Send with Completed Proposal**

\_\_\_\_\_ Proposal shall send a Cover Letter on company letterhead, signed by an individual authorized to commit the firm’s resources to the proposed purchase and to execute legal documents for the company. Letter should contain name and telephone number, name of project lead, additional contacts for continued support and a second member of upper management who can escalate and resolve any unexpected issues.

\_\_\_\_\_ Description of Digital Video Systems that meets the minimum requirements set forth by PACS in the Digital Video System specifications. Each Specification must be addressed in a standard grid format to be valid.

\_\_\_\_\_ Include a statement showing capacity to complete the first initial installation within 90 working days of acceptance to proceed in writing from PACS.

\_\_\_\_\_ Send the original signed, Buy America assurance clause found on pages 17-18, meeting the Special Proposal Instructions at the bottom of page 4.

\_\_\_\_\_ Send the original signed, Anti-Lobbying assurance clause found on page 29.

\_\_\_\_\_ Send the original signed, Federal clause assurance page known as Federal Model Clauses Certification of Compliance located in Section E on page 63 of this RFP package.

\_\_\_\_\_ Proof of commercial insurance meeting the minimum Statutes of the Commonwealth of Kentucky or those required in section D.15, pages 11, whichever is greater.

\_\_\_\_\_ Completed Bid Opportunity List required by Kentucky Transportation Cabinet, Office of Transportation Delivery on located in Appendix B on page 95.

\_\_\_\_\_ Completed, signed and dated Pricing & Proposal Form, Appendix C, pages 99-101.

\_\_\_\_\_  
Signature of authorized person

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone number

# Appendix B: Bid Opportunity List

## BID OPPORTUNITY LIST

Transit Agency: \_\_\_\_\_  
 \_\_\_\_\_

Prime Contractor/Consultant: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

FAX Number: \_\_\_\_\_

Quote/Bid Submitted MM/YR: \_\_\_\_\_

Primary Business Function: \_\_\_\_\_

Bidding or providing Quote on: \_\_\_\_\_

*Note: Under the authority of The Department of Transportation we are required to develop and maintain a "bid opportunity list." The list is intended to be a listing of all firms that are participating, or attempting to participate, on DOT-assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and materials supplies on DOT-assisted projects, including both DBEs and non-DBEs. For consulting companies this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific DOT assisted project. Prime contractors and consultants must provide information for Nos. 1,2,3, and 4 and should also provide any information they have available on Numbers 5,6,7, 8, and 9 for themselves, and their subcontractors and subconsultants.*

<p>1. Federal Tax ID Number: _____ *8. <input type="checkbox"/> SBA</p> <p>2. Firm Name: _____</p> <p>3. Phone: _____</p> <p>4. Address: _____          _____          _____</p> <p>5. Year Firm Established: _____</p> <p style="text-align: center;">Mark One</p> <p>6. <input type="checkbox"/> DBE                      7. <input type="checkbox"/> Subcontractor  <input type="checkbox"/> Non-DBE                    <input type="checkbox"/> Subconsultant</p>	<p style="text-align: center;">Mark One</p> <p>9. Annual Gross Receipts</p> <p><input type="checkbox"/> Less than \$1 million</p> <p><input type="checkbox"/> Between \$1 - \$5 million</p> <p><input type="checkbox"/> Between \$5 - \$10 million</p> <p><input type="checkbox"/> Between \$10-\$15 million</p> <p><input type="checkbox"/> More than \$15 million</p> <p><input type="checkbox"/> &gt; than \$15 million but &lt; \$22.41 million *See below</p> <p>10. Attach References and other credentials.</p>
---	--

Remarks: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\*The standards of the Small Business Administration (SBA) found in 19 CFR part 121 must be met. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS). The firm's (including its affiliates) average annual gross receipts over the past three (3) fiscal years must not have been in excess of \$22.41 million.

# Appendix C: Proposal Form

## PROPOSAL FORM:

To: **Pennyrile Allied Community Services, Inc.**  
**1100 S Liberty Street**  
**Hopkinsville, KY 42241**  
**Attn: Vickie Pennington**

In compliance with your Request for Proposal, RFP of which this Proposal Form is a part, for solicitation of proposals to open on: November 1, 2022 9:00 AM CST, the undersigned proposes to furnish all labor, equipment, and materials as listed below and perform all work for furnishing same in accordance with the above-referenced RFP.

\*\*\*\*\*

The undersigned acknowledges receipt of the following addenda to the *RFP*:

Addendum No. \_\_\_\_\_, dated \_\_\_\_\_

Addendum No. \_\_\_\_\_, dated \_\_\_\_\_

\*\*\*\*\*

I hereby swear (or affirm) under the penalty for false swearing as provided by KRS 523.040:

1. That I am the potential proposed, partner, or officer or employee of the request for proposal corporation having authority to sign on its behalf,
2. That the proposed(s) covering the above-mentioned RFP has been arrived at by the proposed independently and have been submitted without collusion with, and without any agreement, understanding or planned common course of action with, and other vendor of materials, supplies, equipment or services described in the RFP, designed to limit independent proposals or competition;
3. That the contents of the Proposal have not been communicated by the potential proposed or its employees or agent of or its surety on any bond furnished with information and will not be communicated to any such person prior to the opening of the proposal.
4. That the person requesting the proposal is legally entitled to enter into the contracts in the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, including those prohibited by the provisions of RS 45A.330 and 164.390, and;
5. That I have fully informed myself regarding the accuracy of the statements made above.



6. That the proposed is not listed as a "Debarred" firm and excluded from contracting with Federal or Kentucky State government.

**NOTICE**

1. Any agreement or collusion among proposals or prospective proposals which restrain, tend to restrain, or is reasonably calculated to restrain competition by agreement to propose at a fixed price, or to refrain from submitting, or otherwise, is prohibited.
2. Any person who violates any provisions of KRS 45A.325 shall be guilty of a felony and shall be punished by a fine not less than five thousand dollars nor more than ten thousand dollars or be imprisoned not less than one year nor more than five years, or both such fine and imprisonment. Any firm, corporation, or association which violates any of the provisions of KRS 45A.325 shall, upon conviction, be fined not less than ten thousand dollars nor more than twenty thousand dollars.

---

Name of Individual, Partnership, or Corporation

---

Address

---

Authorized Person (Print or Type)	Authorized Signature
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Title of Authorized Person	Date
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\*\*\*\*\*

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Contracting Officer (Print or Type)	Authorized Signature
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Title of Contracting Officer	Date of Award
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## Appendix D: Required Pricing Form

A Separate Pricing and Proposal Form (next page) must be submitted for each system type and for each different camera configuration proposed to PACS for this project.

**ONLY Per Unit Pricing will be accepted. All costs, including shipping, must be built into the per unit price. The Per Unit price must be listed on this Pricing form.**

**All proposals MUST provide a diagram or written description for each camera location, including listing the camera model for each camera location.**

**This applies for all types of vehicles.**

Pennyrile Allied Community Services, Inc.

### **Required Pricing Form**

*RFP In Vehicle Camera and Security System*

# Required Pricing Form

**Vendor Name**

--

<p><b>Per Unit Price: Installed Complete, In Vehicle Camera Systems: <u>Ford E-Series Vehicles</u></b></p>	<p><b>Initial Installed price per unit:</b></p> <p><b>Installed price per unit for the additional purchase options:</b></p>
<p><b>Per Unit Price: Installed Complete, In Vehicle Camera Systems: <u>Ford Transit vehicles or smaller minivan vehicles</u></b></p>	<p><b>Initial Installed price per unit:</b></p> <p><b>Installed price per unit for the additional purchase options:</b></p>
<p>Response must be submitted using a standard grid format addressing all specifications in the order they are listed in the RFP package to be valid. Specifications listed on the left side and a response to each specification on the right side.</p>	
<p>Confirmation of Receipt sent before RFP Package Received</p>	
<p>Completed Bid Opportunity List sent with RFP Package Received</p>	
<p>Proposal Assurance of No Debarment Completed</p>	

Completed Proposal Assurance of No Debarment sent before RFP Package Received	
Sams.gov Site Checked for Debarment and Printed for Documentation	
RFP Package Received by Date required for the RFP	
RFP Package Received by Time required for the RFP	
RFP Checklist of Required Document Completed and Signed	
Confirmation of Receipt Completed and Signed	
Cover letter on company letterhead	
Cover letter on company letterhead Signed	
Signed Cover letter on company letterhead	
Committing appropriate resources Signed	
Company legal name provided	
Company telephone number provided	
Company Project Leader named	
Company additional contacts named	
Company second member of upper management for escalation named	
One original paper copy of entire RFP and all signed forms	
Thumb drive containing one duplicate copy of entire RFP and all signed forms	
Description of Proposed System meeting requirements for the RFP. Each Specification must be addressed in a standard grid format for proposal to be valid. RFP must include a diagram or written description identifying each camera location, including listing the camera model for each camera location	

Statement showing capacity to complete first initial installation within 90 working days Signed	
Original Signed Buy America assurance clause meeting the Special Instructions at the bottom of page 4.	
Original Signed Anti-Lobbying assurance clause	
Original Signed Federal Clause Assurance page	
Proof of Commercial Insurance meeting the minimum required for the RFP	
Completed and Dated Uniform Required Pricing Form Signed with Per unit Pricing listed	
Bid Opportunity List Completed	
Proposal Form Completed	

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Appendix E: RFP Scoring System:**

Experience with FTA funded project.....15  
Good previous experience with transportation.....15  
Best Price.....20  
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