

**REDDING AREA BUS AUTHORITY
BOARD POLICY**

SUBJECT	RESOLUTION NUMBER	POLICY NUMBER	EFFECTIVE DATE
PROCUREMENT POLICY	RABA-90	114	02/22/94
AMENDED	RABA-158	114	12/18/2006

BACKGROUND

The Redding Area Bus Authority purchases supplies, services, and equipment in order to effectively and efficiently operate transportation services. To establish uniformity in Board policy, it is fiscally responsible and appropriate that the Board adopt a policy defining procurement policies.

PURPOSE

It is the purpose of this policy to:

1. Establish efficient procedures for the purchase of supplies, services, and equipment.
2. Secure supplies, services, and equipment at the lowest possible cost commensurate with the quality needed.
3. Exercise positive financial control over purchases and clearly define authority for the purchasing function.
4. Ensure fair and equitable treatment for all vendors who seek to deal with the RABA.
5. Ensure maximum open and free competition in the expenditure of public funds.
6. Provide the safeguards to maintain a procurement system of quality and integrity.

POLICY

Attached is the Redding Area Bus Authority's Procurement Policies and Procedures Manual.



REDDING AREA BUS AUTHORITY

**Procurement
Policies and Procedures
Manual**

Adopted December 18, 2006

Executive Summary

Description of Methods of Procurement

1. Goods and Services

Definition: Procurements of services, supplies, or other property, with the exception of Professional/Architectural and Engineering services or labor and/or materials for public works/construction projects.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Less than \$2,500	Micro Purchase	Transportation Manager
\$2,501 – \$29,999	Small Purchase/RFP/IFB	Transportation Manager
\$30,000 - \$124,999	Small Purchase/RFP/IFB	Executive Officer
Greater than \$125,000	RFP/IFB	RABA Board

Please note that any amendments and/or change orders will be approved at the same price thresholds listed above.

2. Professional Services

Definition: The services of attorneys, physicians, consultants, auditors, specialized printers, or other individuals or organizations possessing a high degree of professional, unique specialized technical skill or expertise, not adaptable to competitive bidding, or where the service involves a contract for special activities, negotiations for the acquisition of land, trash services, insurance bonds, or any other service similar to the above, engaged for a particular project or series of projects.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Up to \$2,500	Micro Purchase	Transportation Manager
\$2,501 to \$29,999	Small Purchase	Transportation Manager
\$30,000 - \$124,999	Small Purchase (RFP/RFQ Optional)	Executive Officer
Greater than \$125,000	RFP/RFQ	RABA Board

3. Architectural and Engineering Services (A/E)

Definition: Procurement of professional consultants for engineering, architectural, land surveying or other support services, such as program management, construction management, feasibility studies, preliminary engineering and design which require performance by a

registered or licensed architect or engineer. A/E services require the use of an A/E method of procurement.

Price Threshold	Method of Procurement	Required Approval Level
Up to \$29,999	Quote/RFP/RQ	Transportation Manager
\$30,000to \$124,999	RFP/RFQ	Executive Officer
Greater than \$125,000	RFP/RFQ	RABA Board

Please note that any amendments and/or change orders greater than 10 percent of the original Purchase Order must be approved by RABA Board.

4. Public Works/Construction Projects

Definition: Procurements of labor and/or materials for construction or public works projects.

Price Threshold	Method of Procurement	Required Approval Level
Up to \$29,999	Small Purchase	Transportation Manager
\$30,000 - \$124,999	Small Purchase	Executive Officer
Greater than \$125,000	IFB	RABA Board

Please note that any amendments and/or change orders to the contract resulting from the solicitation process for public works/construction projects must be approved according to the following:

Type of Service	Price Threshold	Required Approval Level
Services	More than 10% of PO	Executive Officer
Construction	More than 10%	Executive Officer
Force Account Work Plan	Exceeds \$100,000	Executive Officer/FTA
Equipment	20% of Bid Price	RABA Board

5. Rolling Stock

Definition: Rolling Stock refers to operating vehicles such as small buses or cutaways and medium to large fixed route buses.

Price Threshold	Method of Procurement	Required Approval Level
Rolling Stock (total purchase less than \$125,000)	RFP/Consortium/State Bid/ Small Purchase/Piggyback	Executive Officer
Rolling Stock (total purchase greater than \$125,000)	RFP/Consortium/State Bid/ Piggyback	RABA Board

6. Sole Source

Definition: Procurement accomplished through solicitation or acceptance of a proposal from only one available source or solicitation of a number of sources in which competition is determined inadequate.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Services and Goods up to \$29,999	Sole Source	Transportation Manager
Services and Goods \$30,000 to \$124,999	Sole Source	Executive Officer
Services and Goods greater than \$125,000	Sole Source	RABA Board

See Chapter II, Section B.14, for standards for justification for Sole Source.

Note: Methods of Procurement are more specifically defined in Chapter II, Policies and Procedures, under Section B.

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CHAPTER I

Introduction

This procurement manual applies specifically to purchases of goods and services for the Redding Area Bus Authority (RABA) that uses Federal and State transit funds. The RABA purchasing policy is outlined in this Procurement Policy and Procedures Manual.

RABA has responsibilities, which include the operation of a public transportation system and the planning, design and programming of transportation projects. All contracts are awarded by RABA, which is responsible for identifying its needs and originating the procurement package for supplying those needs.

RABA receives funding from both the Federal government and the State, as well as other agencies. Therefore, RABA adopts procurement policies and procedures that are consistent with Federal regulations and the laws of the State of California. These procedures apply to every procurement irrespective of the source of the funds. Specific requirements for procurements funded by the Federal Transit Administration (FTA) are also identified. These procedures apply to any revenue contract whose primary purpose is to either generate revenues in connection with a transit-related activity or to create business opportunities utilizing a FTA-funded asset.

Purpose

The purpose of these policies and procedures is to set forth the procurement methods and establish standards for obtaining goods and services, including construction, professional, and Architectural/Engineering services necessary for the operation of RABA's transit service. These procedures include guidelines for the solicitation, award and administration of formally advertised contracts, as well as the consultant selection, negotiation, award and administration of competitively negotiated and Architectural/Engineering contracts.

The procurement procedures are designed to:

- * Establish efficient procedures for the purchase of supplies, services, and equipment.
- * Secure for RABA supplies, services, and equipment at the lowest possible cost commensurate with quality needed.
- * Exercise positive financial control over purchases and clearly define authority for the purchasing function.
- * Ensure fair and equitable treatment for all vendors who seek to deal with RABA.
- * Ensure maximum open and free competition in the expenditure of public funds.
- * Provide the safeguards to maintain a procurement system of quality and integrity.

The methods by which the foregoing are implemented are described in detail in the remainder of this document and the attachments hereto.

CHAPTER II

Policies and Procedures

A. PROCUREMENT POLICIES

RABA is governed by an eight-member Board. Board members are comprised of the five Redding City Council, one Shasta Lake Councilperson, one Anderson Councilperson, and one County of Shasta Board of Supervisor. These policies serve as a base upon which procurement procedures can be developed.

1. Delegation

The delegation of procurement policies and procedures are as follows:

- a. Except as otherwise provided in these procedures, all rights, powers, duties and authorities relating to the procurement of supplies, services, and construction vested in the Executive Officer are hereby delegated to the Transportation Manager or designee.
- b. The Executive Officer is specifically authorized to delegate approval authority to the Transportation Manager or other designee.
- c. The RABA Board is specifically authorized to execute approval authorized at any level.
- d. The Transportation Manager is a duly appointed employee by the Executive Officer.

2. Procurement Officer and Project Manager Responsibilities

Procurement Officer

The Transportation Manager will act in the capacity of Procurement Officer, having authority to authorize contract actions. Whenever the term "Procurement Officer" shall appear in this document, the term shall also include authorized designee(s). (The authority of the designees varies significantly depending on the value and type of procurement action).

- a. The Procurement Officer is responsible for updating these procurement procedures on an as-needed basis.
- b. The Procurement Officer is responsible for all procurements.
- c. The Procurement Officer shall be authorized to enter into, administer, and terminate contracts or purchases. However, the Procurement Officer may bind RABA only to the extent of the

contracting authority delegated by the Executive Officer.

- d. The Procurement Officer shall ensure that a clear and accurate specification/scope of work is developed for each procurement.
- e. The Procurement Officer shall ensure that contractors receive impartial, fair, and equitable treatment in accordance with the policies specified in this Manual.
- f. The Procurement Officer shall not enter into a contract unless the Procurement Officer has ensured that all applicable requirements of Federal law, Federal regulations and Circulars, California law, and all other applicable RABA procedures (including approvals) have been met.
- g. The Procurement Officer or his/her designee shall be the primary RABA employee to determine that contract prices are fair and reasonable prior to signing the contract or any changes thereto.

Project Manager

A duly appointed employee who will be directly responsible for the daily technical administration of a contract including monitoring the contractor in its performance of the contract and performing those functions as specified by RABA Policy. The Project Manager should be a responsible individual assigned to and familiar with the procedures and requirements of the user department. As such, the Project Manager is Procurement Officer's technical expert and is at his/her disposal to assist in insuring contractor compliance with technical requirements of the contract. Normally, the Project Manager approves or disapproves the technical acceptability and timeliness of the work completed and the invoices submitted by the contractor for payment.

- a. The Project Manager shall ensure that sufficient unencumbered funds are available for obligation for each contract.
- b. The Project Manager shall develop a clear and accurate specification/scope of work for each procurement.
- c. The Project Manager is also the person to whom reports of warrantees regarding equipment malfunctions, failures or any problems with the contractor's performance are submitted, pursuant to the specific authority granted by the user department manager. The Project Manager makes the initial request for contractor remedial action. The Procurement Officer becomes involved when and if the lapse constitutes a serious, i.e., repetitive, or unresolved, breach of contractor's civil or contractual responsibility.
- d. Should the contractor fail to respond in a timely or adequate manner to rectify any problem, the Project Manager notifies the Procurement Officer that an apparent breach of the contract

exists. After investigating the situation, the Procurement Officer and the Project Manager take any steps necessary and available to enforce RABA's rights under the contract. This may include withholding payment, imposing liquidated damages, negotiation and recommending a settlement, terminating the contractor for default, or referring the matter for legal action.

- e. The Project Manager also attends pre-bid and pre-proposal conferences as the technical expert, conducts investigations of proposed contractor's technical past performance, questions prospective contractors during clarifications and discussions as to their technical capability to perform the contract, assists the Procurement Officer with contract negotiations, ascertains the availability of funds prior to asking the Procurement Officer to initiate the negotiation and approval process for change orders, contract modifications and supplemental agreements, and issues directions to correct or replace defective items of work.

3. **Standards of Conduct and Conflict of Interest Policies**

There will be uniform and equitable application of the Standards of Conduct of RABA involving all activities associated with the procurement of goods and services. This section defines responsibility to identify and prevent a real or apparent conflict of interest.

Conflict of Interest

The RABA Board has adopted a Conflict of Interest Code under which the following groups shall not participate in or attempt to use their official position to influence any purchasing decisions in which they or persons related to them have a financial interest:

- a. The employee, officer, agent or Board member
- b. Any member of his/her immediate family
- c. His or her partner, or
- d. An organization that employees, or is about to employ, any of the above.

In cases where there may be a benefit, either direct or indirect, there is a responsibility to report in writing such benefit to the RABA Board. If anyone fails to report such benefit, he or she will be subject to any disciplinary proceeding deemed appropriate by the RABA Board, including possible dismissal.

Members of the groups listed in item (a) above shall be subject to the conflict of interest laws of the state of California. Anyone who violates the standards of the law shall be subject to the penalties, sanctions or other disciplinary actions provided for therein.

Gratuities, Kickbacks, and Contingent Fees

No member of the groups listed in item (a) above shall solicit, demand, or accept from any person, contractor, potential contractor, or potential subcontractors, anything of a monetary value, including gifts, gratuities, favors, etc. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by RABA, including possible dismissal.

Confidential Information

No member of the groups listed in item (a) above shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to them by blood, marriage, or by common commercial or financial interest. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by RABA, including possible dismissal.

Organizational Conflict of Interest

Each entity that enters into a contract with RABA is required, prior to entering into such contract, to inform RABA of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the nature of the work to be performed under a contract may, without some restriction on future activities, result in an unfair competitive advantage to the contractor, or may impact the contractor's objectivity in performing the contract work.

4. Purchasing Policies

Equal Employment Opportunity/Affirmative Action

All procurement documents issued by RABA require all interested vendors to certify:

- a. That the vendor does not discriminate against any employee or applicant for employment, because of race, religion, sex, age, creed, color, disability or national origin;
- b. That the vendor is in compliance with all Executive Orders and Federal, state and local laws regarding fair employment practices and non-discrimination in employment; and
- c. That the vendor agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

Disadvantaged Business Enterprise

RABA Board has determined that disadvantaged business enterprises as defined in 49 CFR, Part 26 shall have the opportunity to compete fairly for contracts

financed in whole or in part with Federal funds. Accordingly, all RABA procurements funded with Federal funds may include, as appropriate, the use of goals for the procurement of all classes of goods and services, as set forth in RABA's Disadvantaged Business Enterprise program.

Cooperative Procurement

When circumstances warrant, RABA may attempt to fill requirements through a cooperative purchasing agreement (without independent bids or quotations) with the State of California, or with other appropriate public agencies.

Open Competition Required.

All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- a. Unreasonable requirements placed on firms in order for them to qualify to do business;
- b. Unnecessary experience and excessive bonding requirements;
- c. Noncompetitive pricing practices between firms or between affiliated companies;
- d. Noncompetitive award to any person or firm on retainer contracts;
- e. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to RABA; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage.
- f. The specification of only a brand name product without listing its salient characteristics and not allowing an equal product to be offered;
- g. Exclusionary or discriminatory specifications; and
- h. Any arbitrary action in the procurement process.
- i. Unless otherwise indicated, RABA will follow the State of California Public Contract Code within the limits then in effect.

5. Public Records Act

All bids and proposals received become the exclusive property of RABA. At such time as a contract award is recommended to the RABA Board, all bids and proposals become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are trade secrets as that term is defined in

California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" OR "PROPRIETARY." RABA shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, with limitation, those so marked if disclosure is deemed required by law or by an order of a court. Bids or proposals that indiscriminately identify all or most of the bid or proposal as exempt from disclosure without justification may be found technically unacceptable.

B. PROCEDURES

Quick Reference Guide

Step-by-Step Guide to the Procurement Process for RABA Programs, Services, and Supplies

- Step 1:** Staff must determine the following:
- a. Project scope;
 - b. Expected cost of the procurement;
 - c. Funding source and whether the procurement is budgeted or non-budgeted; and
 - d. Whether the procurement will be informal or formal.
- Step 2:** For procurement type, staff should refer to the policies described herein. Any questions regarding the procurement process should be immediately discussed with the Procurement Officer to ensure that the policies are being followed.
- Step 3:** The Procurement Officer is responsible for the administration of the procurement, which includes obtaining the required approval, if necessary, before initiating the procurement process.
- Step 4:** Upon completion of the procurement process, authorization must be issued by the Procurement Officer prior to the execution of any contract, notice to proceed, or initiation of work.

1. **Independent Cost Estimate**

An independent cost estimate shall be performed on all FTA-funded procurements prior to receiving bids or proposals. The extent of the cost estimate will depend on the type of procurement being pursued. For example, a cost estimate for a micro purchase (see explanation below) may only involve phone calls to obtain price quotes; while a cost estimate for the procurement of a commuter bus would require a more involved process to assess the market and to develop a reasonably accurate estimate. The cost required to research and prepare the estimate should not outweigh the potential benefits of the estimate. An independent estimate can be obtained from different sources including the following:

- * Published competitive prices
- * Results of competitive procurements
- * Estimates by in-house estimators
- * Outside estimators

2. Reasonableness of Price (Price/Cost Analysis)

In all FTA-funded procurements, a price or cost analysis shall be used to determine the reasonableness of the bid price.

The Procurement Officer may conduct a price analysis in evaluating a bid price. If a valid price analysis cannot be completed, a cost analysis of the bid price may be conducted.

“Price Analysis” is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.

“Cost Analysis” is the review and analysis of a contractor's cost or pricing data and of the factors applied in projection from the data to the estimated costs in order to form an opinion on the degree to which the contractor's proposed costs represent the cost of performance of the contract, assuming reasonable economy and efficiency.

As compared to price analysis, cost analysis involves a more detailed review of the offeror's proposal.

Normally, price analysis may be accomplished through one or more of the following activities:

- a. The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, etc.).
- b. The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry.
- c. The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities, and similar indicators, to RABA with discount or rebate arrangements.
- d. The comparison of proposed prices with estimates of cost independently developed by personnel within the Authority.
- e. The comparison of prices paid by other users (government or commercial) of the same or similar items to the proposed prices.

Normally, cost analysis may be accomplished through the following:

- a. Verify contractor's cost data.

- b. Evaluate specific elements of costs and project these elements to determine the effect on prices of such factors as:
 - i. The necessity for certain costs;
 - ii. The reasonableness of amounts estimated for the necessary costs;
 - iii. Allowances for contingencies; and
 - iv. The basis used for allocations of particular overhead costs to the proposed contract.
- c. When the necessary data is available, compare the contractor's estimated cost with:
 - i. Actual costs previously incurred by the contractor;
 - ii. The contractor's last prior cost estimate for the same or similar estimates;
 - iii. Current cost estimates from other possible sources; and
 - iv. Prior estimates or historical costs of other contractors manufacturing the same or similar items.
- d. Forecasting future trends in costs from historical experience:
 - i. In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
 - ii. In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area: (1) Is the cost allowable in accordance with guidelines in Section 31 of the Federal Acquisition Regulations (FAR), (2) Is the cost allocable to the particular project?, and (3) Is the cost reasonable?

If only one bid is received, the sole bidder must cooperate with RABA as necessary in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of the single bid.

3. **Best Value**

"Best Value" is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award

selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the RABA.

4. Tag-ons

“Tag-on” is defined as the addition of work (supplies, equipment, or services) that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals. “In scope” changes are not tag-ons.

The use of tag-ons is prohibited and applies to the original buyer as well as to others.

5. Piggybacking

"Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services.

Piggybacking is permissible when the solicitation document and resultant contract contain an assign ability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed, and awarded through the use of an indefinite-delivery-indefinite-quantity (IDI) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDI contract, then there must be a total minimum and maximum.

6. Use of Brand Name

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

7. Options

RABA may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase, at a pre-determined price, additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If RABA chooses to use options, the requirements below apply:

a. Evaluation of Options

The option price, quantities or and periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

b. **Exercise of Options**

- i. RABA must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
- ii. An option may not be exercised unless RABA has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

8. Advance Payments

RABA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on RABA's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

9. Progress Payments

RABA may use progress payments provided the following requirements are followed:

- a. Progress payments are only made to the contractor for costs incurred in the performance of the contract.
- b. RABA must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit, or equivalent means to protect the RABA's interest in the progress payment.

10. Procurement by Micro-Purchases

Purchases below \$ 2,500 may be made without obtaining competitive quotations if it is determined by the Procurement Officer that the price is fair and reasonable. How the determination is made must be documented by the Procurement Officer authorizing the purchase and attached to the invoice. For public works/construction projects or activities exceeding \$2,000, the requirements of the Davis-Bacon Act (40 U.S.C. 276a - 276a(7)) and implementing Department of Labor regulations apply. In these cases, please follow Davis-Bacon requirements in place of micro purchase procurement methods.

11. Small Purchases

For procurements between \$2,501 and \$124,999 for professional services or between \$2,501 and \$124,999 for goods and other services, at least two written or e-mailed quotations from vendors are required. Oral quotes will be accepted with written confirmation received in 24 hours. The responsibility for soliciting quotations rests with the Procurement Officer. Appropriate documentation, including but not limited to, a list of the vendors contacted, a fair and reasonable price determination, and the quotes received shall be filed with the project documentation.

12. **Competitive Procurement Process**

Competitive procurement procedures are used for procurement of professional services valued greater than \$125,000, procurement of goods and other services valued greater than \$125,000, and public works/construction projects valued at greater than \$125,000. The two types of competitive procurements are the Request for Proposals and the Invitation for Bids. The following procedures describe each type in detail.

Invitation for Bids (IFB)

The Invitation for Bids (IFB) competitive procurement process is used for public works/ construction projects, and, if appropriate, purchases of goods and services whose cumulative value will exceed \$29,999. The IFB process is coordinated by the Procurement Officer.

The IFB method of procurement is employed when all of the following apply:

- a. A complete, adequate and realistic specification or purchase description is available
- b. Two or more responsible suppliers are willing and able to compete effectively for the contract
- c. The procurement lends itself to a firm-fixed price contract, and selection of the successful bidder can be made on the basis of price
- d. Scope of work is clearly defined
- e. No discussion with bidder is needed

The following general rules apply to scopes of work and specifications:

- a. A common basis for bidding must be provided. Specifications and scopes of work should set out the essential characteristics of the items or services to be procured. Whenever possible, the expected quality of services to be provided or the performance characteristics of the item should be specified.
- b. Specifications and scopes of work should not call for features or quality levels which are not necessary to meet the bid requirements.
- c. All optional items should be identified by the RABA, and the solicitation documents should set forth the expected needs and the manner in which the related bid prices will be considered.
- d. In order to foster free and open competition, specifications may not require a "brand name" product without allowing an "or equal" product to be offered. The specifications would, accordingly, describe the performance or other salient characteristics of the brand name product.

Because standard specifications and requirements allow for more efficient operations and result in lower prices, they should be used wherever suitable. Maximum use should be made of industry, Federal, State, and local government specifications and requirements.

Issuance of IFB

- a. The Project Manager shall initiate an approval to solicit, in accordance with the procedures set forth in this document at the start of the IFB process.
- b. A notice of an Invitation for Bid (IFB) will be prepared by the Procurement Officer, and will be advertised, and, if the value of the procurement is over \$29,999, must be published in a newspaper of general circulation or in a trade magazine/newspaper related to the procurement no less than ten (10) days prior to the date set for bid closing. The notice must include the following minimum information:
 - i. A general description of the services or goods to be purchased
 - ii. Where to request an IFB
 - iii. The location, day, and time of the Pre-Bid Conference (if one is scheduled)
 - iv. The location, last day, and hour bids will be accepted (deadline)
 - v. Bid Acceptance Period
 - vi. Whether Federal funds are being used for the procurement.

IFB Packet

The Procurement Officer will coordinate the release of the IFB packet. The IFB packet will include the following:

Instructions To Bidders – General instructions concerning the bid format, pre-contractual expenses, contract conditions, pre-bid conferences, and other information.

Submittal Documents -- Required forms to be complete by the bidder and submitted with the bid.

Exhibits – These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the bidders to properly respond to the IFB.

General Terms and Conditions -- General provisions concerning the IFB process.

Special Terms and Conditions – Provisions unique to each IFB, if applicable, will be included (e.g., special terms of the resulting contract; any modifications to general terms and conditions; milestones; and special payments procedures).

Technical Specification – Specifications shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Specifications shall also seek to promote overall economy for the purposes intended, and encourage competition in satisfying RABA's needs. Descriptions shall not contain features that unduly restrict competition. The description shall include a statement of the qualitative nature of the material, product, or service to be procured. When necessary, the description shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

Overly detailed product specifications should be avoided. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description will be used.

A "brand name or equal" description can be used only when an adequate specification or more detailed description cannot be provided, without performing an inspection and analysis, in time for the acquisition under consideration. If "brand name or equal" is used, the IFB must carefully identify the minimum needs, and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

A control record will be maintained by the Procurement Officer as IFB packets are distributed to prospective bidders. The control record profiles the following information:

- i. Date and time IFB packets are distributed
- ii. Names and addresses of bidders receiving bid invitations and attending pre-bid conferences

The control record has two primary purposes:

- i. Serves as a mailing list for the issuance of addenda, and
- ii. Provides a record for verification in cases of vendor protests and other issues.

Pre-Bid Conference

A pre-bid conference may be used as a means of briefing prospective bidders

and explaining specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. The pre-bid conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by potential bidders is not mandatory. Minutes

of the conference and the list of attendees will be issued to all prospective bidders.

The pre-bid conference shall be chaired by the Procurement Officer, and shall follow the format below:

- a. Discuss basic requirements such as instructions to the bidders, funding, contract type, and specific points that should be addressed in each bid;
- b. Discuss the participation requirements for disadvantaged business enterprises (DBE);
- c. Discuss the scope of work and have the appropriate staff available to answer technical questions; and,
- d. Conclude by announcing when and where the bids are due.

Amendments to Invitation for Bids

If after issuance of an IFB, but before the time set for opening of bids, it becomes necessary to make changes in quantities, specifications, opening dates, etc., or to correct or clarify a defective or ambiguous IFB, such changes shall be accomplished by the issuance, in writing, of an amendment to the IFB. Before issuing an amendment to an IFB, the period of time remaining until the time set for bid submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective bidders of an extension of time by facsimile or telephone. Such notification should be confirmed in the amendment. The amendment shall be sent to each prospective bidder to whom the IFB was furnished and shall provide:

- a. Amendment number and date;
- b. Number, date and the title of the IFB concerned;
- c. Clearly stated changes made in the IFB and the extension of the opening date, if applicable;
- d. Instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge and return the amendment.

Cancellation of IFB

Invitations for bids shall not be canceled unless cancellation is clearly in RABA's interest (i.e., where there is no longer a requirement for the material or service, or

where amendments to the invitation would be of such magnitude that a new invitation is desirable). When an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued.

The notice of cancellation shall identify the invitation for bids; briefly explain the reason the invitation is being canceled; and, where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any further requirements for the type of material or service involved.

If the invitation for bids is canceled before the time for bid openings, this fact shall be recorded in the control file, with a statement of the number of entities invited to bid and the number of bids received.

Receipt of Bids

Bids shall be submitted so as to be received at the location designated in the invitation for bids not later than the exact time set for the receipt of bids. The only acceptable evidence to establish the time of receipt at RABA's offices is the time/date stamp of RABA (City), which shall be placed on the bid wrapper immediately upon receipt. The RABA (City) staff person receiving the bid shall sign the exterior of the bid package to verify the date and time received and person receiving the bid. The timeliness of bids is the sole responsibility of the bidder.

Withdrawal of Bids

Any bidder may withdraw their bid, either personally or by written request, received by RABA at any time prior to the time fixed for the receipt of the bids. Negligence on the part of Bidders in preparing their bid confers no right of withdrawal of their bid after such bid has been opened. No bid may be withdrawn for a period as established within the bid documents and no less than 30 days following bid opening.

Bid Opening

Upon receiving the bids, it is the Procurement Officer's responsibility to record their receipt and keep them unopened and secure, except as stated below.

Prior to bid opening, information concerning the identity and number of bids received shall be made available only to RABA representatives who have a proper need for such information, as determined by the Procurement Officer.

Unidentified bids may be opened solely for the purpose of identification and then only by the Procurement Officer. If a sealed bid is opened by mistake or for purposes of identification, the Procurement Officer shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bid number, and their signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to the public bid opening.

The Clerk or designee shall decide when the time set for bid opening has arrived and shall so declare to those present.

All bids received prior to the time set for receipt shall then be publicly opened and when practical, read aloud by the Procurement Officer to the persons present. The bids received shall be recorded. If it is impractical to read the entire bid, as where many items are involved, the total amount of the bid shall be read.

The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified.

The original bid form shall not be allowed to pass out of the hands of the Procurement Officer. The original bids may not be removed from the office except for official review and evaluation by RABA legal counsel. A copy of each bid must be maintained in RABA's procurement files in lieu of such originals for the interim period.

All bids will be open to public review after award has been made. All bids, including attachments and envelopes, shall be retained for the official files.

Recording of Bids – The invitation for bid number, bid opening date and time, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation, shall be entered on the official RABA record and shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date and time, general description of the procurement items, and the total price bid where definite quantities are involved.

The official record shall be completed as soon as practical after bids have been opened and read aloud. The Procurement Officer shall be responsible for maintaining files of these records and abstracts.

The file of the invitation for bids shall show the distribution that was made and the date thereof. The names and addresses of prospective bidders requesting the invitation for bids who were not included on the original solicitation list shall be added and made a part of the record.

Tabulation of Bids – Bids shall be evaluated on the basis of responsiveness and responsibility indicated in the Invitation for Bids. Award shall be made to the bidder submitting the lowest bid, unless RABA determines that the bid is not responsive and/or the bidder is found to be not responsible.

Mistakes in Bids –

- a. General – Technicalities or minor irregularities in bids may be waived if the Procurement Officer determines that it shall be in RABA's best interest. The Procurement Officer may either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid, or waive the deficiency if it is to RABA's advantage to do so.

- b. Mathematical Errors – Errors in extension of unit prices or in mathematical calculations shall be corrected by RABA prior to award. In all cases of errors in mathematical computation, the unit prices shall not be changed.
- c. Mistakes Discovered Before Opening – A bidder can correct mistakes discovered before the time and date set for bid opening by withdrawing the original bid and submitting a new bid prior to the time and date set forth for bid opening.
- d. Confirmation of Bid – If the Procurement Officer knows or has reason to conclude that a mistake has been made, the bidder shall be requested to confirm the bid. Situations in which confirmation will be requested include obvious, apparent errors on the face of the bid, or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid will be corrected or withdrawn if any of the following conditions are met:

If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and must not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transportation errors, and arithmetical errors.

A bidder will be permitted to withdraw a low bid if:

- i. A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - ii. The bidder submits proof of evidential value, which clearly and convincingly demonstrates that a mistake was made.
- e. Determination Required – When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Procurement Officer shall prepare a determination showing that the relief was granted or denied.
- f. Minor Irregularities in Bids –
 - i. A minor irregularity is one that is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation in a bid from the exact requirement of the solicitation. If such a situation exists, the correction of the irregularity or waiver of the requirement may be made if it would not be prejudicial to other bidders.
 - ii. A defect or variation in a bid is considered immaterial and inconsequential when its significance as to price, quantity, quality or delivery is trivial or be eligible when contracted with the total cost or scope of the procurement.

- iii. The Procurement Officer may either give the bidder an opportunity to cure any deficiency resulting from minor informality or irregularity in a bid, or waive the deficiency, whichever is to the advantage of RABA .

- g. Multiple or Alternate Bids – Unless multiple or alternate bids are requested in the solicitation, these bids will not be accepted. However, if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid submitted by the bidder. These provisions shall be set forth in the solicitation and, if multiple or alternate bids are allowed, it shall specify their treatments.

- h. Analysis of Limited Bid Response – If less than three bids have been received, the Procurement Officer may examine the reasons for the small number of bids received. The purpose of this examination is to ascertain whether the small number of responses is attributable to an absence of any of the prerequisites of formal advertising. A price or cost analysis shall be performed to establish the reasonableness of the bid price before an award is made.

- i. Determination of Responsiveness –
 - i. Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

 - ii. A bid shall be rejected when the bidder imposes conditions, which modify requirements of the invitation for bids. Bids may be rejected in cases, including but not limited to, in which the bidder:
 - Attempts to protect itself against future changes in conditions such as increased costs, if a total price to RABA cannot be determined for bid evaluation.

 - Fails to state a price and in lieu thereof states that price shall be “price in effect at time of delivery.”

 - States a price but qualifies such price as being subject to “price in effect at time of delivery”.

 - Where not authorized by the invitation for bid, conditions or qualifies the bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received (or does not receive) award under a separate procurement.

Limits rights of RABA under any contract clause.

Fails to comply with all of the requirements of the IFB.

If a bid bond is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.

- iii. The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.
 - iv. After submitting a bid, if a bidder transfers all of his assets or the part of his assets related to the bid during the period between the bid opening and the award, RABA may accept or reject the bid at its sole discretion.
- j. Responsible Bidder Evaluation – Before awarding the contract, RABA shall determine that a prospective contractor is responsible and that prices are reasonable. Bidders may be asked to provide any information required to determine the responsibility of the bidder. A responsible bidder is one who meets the standards set forth below:
- i. Has adequate financial resources, or the ability to obtain such resources as required during performance of the contract.
 - ii. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
 - iii. Has a satisfactory record of performance. Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered, may be considered to be non-responsible bidders. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
 - iv. Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
 - v. Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.
 - vi. Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.
 - vii. Bidders must quote on all items appearing on the Proposal form, unless specific directions allow for partial bids. The Bidder shall legibly enter unit or lump sum price in both words and figures, for all items required on the Proposal. When bids on all items are not required, Bidders shall

insert the words "NO BID" where appropriate. In case of discrepancy between words and figures, the words will prevail. Failure to legibly quote on items may disqualify the bid. Alternate bids will not be considered unless specifically called for in the Proposal form.

Evaluation of the responsibility of prospective contractors may be made based upon the following sources:

- i. A list of debarred, suspended or ineligible firms or individuals.
 - ii. From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.
 - iii. Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used.
 - iv. References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.
 - v. Documented past performance on contracts with RABA.
- k. Rejection of All Bids – Anytime prior to the bid opening date and time, RABA may cancel or postpone the bid opening, or cancel the IFB in its entirety.

Preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is compelling reason to reject all bids and cancel the invitation.

Every effort shall be made to anticipate changes in a requirement prior to the date of bid opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing unnecessary exposure of bid prices.

As a general rule, after opening, an invitation for bids should not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the invitation for bids and the additional quantity should be treated as a new procurement.

Invitations for bids may be canceled after opening but prior to award, and all bids rejected, where it is consistent with Federal and State procurement regulations. A written determination must be included in the invitation for bid file stating that cancellation is in the best interest of RABA for reasons such as the following:

Inadequate, ambiguous, or otherwise deficient specifications were cited in the invitation for bids.

The supplies or services are no longer required.

The invitation for bids did not provide for consideration of all factors of cost to RABA .

Bids received indicate that the needs of RABA can be satisfied by a less expensive item differing from that on which bids were received.

All otherwise acceptable bids received are at unreasonable prices.

The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. Such situation must be substantiated and reported to RABA's legal counsel.

The bids received did not provide competition which was adequate to ensure reasonable prices. A price or cost analysis may be used to establish the reasonableness of prices.

When it is determined to reject all bids, RABA shall notify each bidder that all bids have been rejected and stating the reason for such action.

- I. Rejection of Individual Bids – Any bid that fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

A bid shall be rejected where the bidder imposes conditions that modify requirements of the invitation for bids. For example, bids may be rejected in which the bidder:

Attempts to protect itself against future changes in conditions such as increased costs, if a total price to RABA cannot be determined for bid evaluation.

Fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery."

States a price but qualifies such price as being subject to "price in effect at time of delivery."

Where not authorized by the invitation for bid, conditions or qualifies the bid by stipulating that the bid is to be considered only if, prior to date of

award, bidder received (or does not receive) award under a separate procurement.

Limits rights of RABA under any contract clause.

Fails to comply with all of the requirements of the IFB.

Bids received from any person or firm debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.

Low bids received from firms determined to be not responsible pursuant to Federal or State procurement regulations shall be rejected in accordance with the procedures set forth in this Chapter.

A bid may be rejected if a bid guarantee is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.

The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.

After submitting a bid, if a bidder transfers all of its assets or that part of its assets related to the bid during the period between the bid opening and the award, the transferee may not take over the bid, thus RABA may reject the bid.

Award of the Contract

Unless all bids are rejected, award shall be by written notice, within the time for acceptance specified in the bid or extension thereof, to the responsible and responsive bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price.

When award is made to other than the lowest bidder, the lowest bidder will be notified in writing by RABA of any evidence reflecting upon the responsibility of the bidder and affording the bidder the opportunity to rebut such evidence and present evidence of qualifications to perform the contract.

Award shall be made by mail or personal delivery to the successful bidder of a notice of award and the proper contract documents. RABA will finalize the execution of the contract and send a copy to the successful bidder.

Final Award

The contract will be drafted by the City Attorney, Procurement Officer and reviewed by legal counsel for appropriate language and terms. The Procurement Officer will ensure that the contract is executed at the approval level required in these procedures.

Three original signed copies of each contract will be executed by RABA and the contractor. The Procurement Officer will maintain one original of the contract and distribute additional copies to appropriate parties.

Project Completion

All original documentation related to each procurement such as the IFB, Bid, control record, board report, background data, evaluation criteria and scores, meeting reports/notes, as well as the logs documenting bid opening dates and

bid receipt dates will be submitted to the Transportation Manager for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of four years after the project is closed out and completed unless a different time period is mandated by a funding entity.

Request for Proposals (RFP)

The Request for Proposals (RFP) competitive procurement process is used when conditions are not appropriate for the use of an IFB. The latter is generally the case in the purchase of services such as lease agreements, maintenance and service contracts, rental contracts and professional service contracts. The RFP process is coordinated by the Procurement Officer.

The RFP process is a competitive negotiated procurement process that requires evaluation of offeror's proposed costs and understanding of the contract performance requirements in accordance with established evaluation criteria. The competitive negotiated procurement process does not require award to the lowest offer or. An RFP generally includes:

- Project, department and agency background
- Purpose of the engagement
- General firm qualifications desired
- Scope of work (see subsection B)
- Project schedule
- Proposal requirements
- Criteria for selection
- Payment terms

Issuance of RFP

- a. The Project Manager shall initiate a purchase requisition in accordance with the procedures set forth in this document at the start of the RFP process.
- b. A notice of an RFP will be prepared by the Procurement Officer, and will be advertised as a public notice, and if the value of the procurement is over \$50,000, must be published in a newspaper of general circulation no less than two weeks prior to the date set for receipt of proposals. The notice must include the following minimum information:
 - i. A general description of the services or goods to be purchased
 - ii. Where to request an RFP

- iii. The location, day and time of the Pre-Proposal Conference (If one is held)
- iv. The location, last day and hour proposals will be accepted (deadline)
- v. Whether Federal funds are being used for the procurement.

RFP Packet

The Procurement Officer will coordinate the release of the RFP packet. The RFP packet will include the following:

Instructions To Proposers – General instructions concerning the proposal format, pre-contractual expenses, contract conditions, pre-proposal conferences, and other information.

Attachments – Required forms to be completed by the proposer and submitted with the proposal including required Federal certifications (when using Federal funds).

Exhibits – These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the proposers to properly respond to the RFP. For professional services, a copy of the standard professional service agreement should be included in the exhibits.

Scope of Work – Each RFP will contain a statement or scope of work prepared by the Project Manager which provides a clear and accurate description of the technical requirements for the materials, products, or services being produced. A statement or scope of work should only state the actual minimum needs of RABA, and be developed in a manner designed to promote full and open competition. At a minimum, the statement or scope of work should address the following areas:

- i. A detailed description of the work to be performed outlining various tasks or phases to be performed, and defining the limits of the proposed project;
- ii. A requirement for periodic reporting or progress on the project if the procurement involves consultant or professional services;
- iii. A proposed delivery schedule; and,
- iv. A proposed contract period.

Evaluation Criteria – Each RFP will contain the criteria and method that will be used to select the successful proposer. If the selection is to be

made by lowest price, that will be stated in the solicitation documentation. If the selection process will be a “best value” determination, the solicitation will state so and the relative significance of each criteria will also be included in the solicitation document.

A control record will be maintained by the Procurement Officer as RFP packets are distributed to prospective bidders. The control record profiles the following information:

- i. Date and time RFP packets are distributed.
- ii. Names and addresses of vendors receiving the RFP and attending the pre-proposal conference.

The control record has two primary purposes:

- iii. Serves as a mailing list for the issuance of addenda.
- iv. Provides a record for verification in cases of vendor protests and other issues.

Pre-Proposal Conference

A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are received. The pre-proposal conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by prospective proposers is not mandatory. Minutes of the conference and the list of attendees will be issued to all prospective proposers who attended the conference.

The pre-proposal conference shall be chaired by the Procurement Officer, and shall follow the guidelines below:

- a. Discuss basic requirements such as instructions to the proposers, funding, contract type, evaluation criteria, and specific points that should be addressed in each proposal;
- b. Discuss the participation requirements for disadvantaged business enterprises (DBE);
- c. Discuss the scope of work; and,
- d. Conclude by announcing when and where the proposals are due and by restating the requested proposal length and maximum pages in scope of work.

RFP Amendments

If after issuance of requests for proposals, but before the time set for receipt of proposals, it becomes necessary to make changes in quantities, specifications,

delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP, such changes shall be accomplished by issuance, in writing, of an addendum to the RFP. Before issuing an addendum to an RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective proposers of an extension of time by facsimile or telephone. Such notification should be confirmed in the addendum. The addendum shall be sent to each prospective proposer to whom the RFP was furnished, unless the RFP stated that proposers need to provide their contact information by a certain date if they intend to submit a proposal. If such a requirement exists as part of the RFP, the addendum shall be sent to each proposer who has submitted their contact information.

Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an addendum to the RFP. No award shall be made on the request unless such addendum has been issued in sufficient time to permit all prospective proposers to consider such information in submitting or modifying their proposals.

The RFP will indicate that RABA is not bound by any oral representations, clarifications, or changes made in the written specification by RABA's employees, unless such clarification or change is provided to potential proposers in written addendum form from RABA.

Each amendment issued to a request for proposals shall:

- a. Be serially numbered and dated.
- b. Include the number, date and a description of the original RFP concerned.
- c. Clearly state the changes made in the RFP and the extension of the due date, if any.
- d. Include instructions to bidders for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge or return the amendment.

Cancellation of RFP

RABA has the right to cancel RFP's at any time.

Receipt of Proposals

Proposals shall be submitted so as to be received at the location designated in the RFP not later than the exact time set for the receipt of proposals. The only acceptable evidence to establish the time of receipt at RABA's offices is the date stamp, the written time of receipt, and the full signature of the RABA employee who received the proposal verifying the time of receipt. The RABA staff person receiving the proposal shall sign the exterior of the proposal package to verify the date and time received and person receiving the proposal. The timeliness of

proposals is the sole responsibility of the proposer.

Withdrawal of Proposals

Any proposer may withdraw its proposal, either personally or by written request, through e-mail or by written request, received by RABA at any time prior to the time fixed for the receipt of the proposals. Negligence on the part of a proposer in preparing the proposal confers no right of withdrawal of the proposal after such proposal has been opened. No proposal may be withdrawn for a period of 60 days following the proposal deadline.

Format of Proposal

The response to each RFP must be made in accordance to the requirements set forth in the RFP, both for mandatory content and for sequence. Noncompliance on the inclusion of conditions, limitations, or misrepresentations may be cause for rejection of a proposal.

Evaluation and Selection Process

Proposals submitted in response to the RFP will be evaluated by an Evaluation Committee established by RABA, in accordance with the criteria set forth in the RFP. The Evaluation Committee shall score the proposals and make a recommendation to the Transportation Manager as to which PROPOSERS are within the competitive range. Procurement Officer will notify PROPOSERS in writing whether or not they are in the competitive range.

Interviews and Best and Final Offers (BAFOs)

Interviews and negotiations will be held by the Transportation Manager, or designee and/or his/her representatives with all PROPOSERS determined to be in the competitive range. The Transportation Manager, or designee and/or his/her representatives shall have the right to conduct a cost/price analysis, to review and audit all business records and related documents of any and all PROPOSERS (including any affiliate or parent company, partner, or joint venture member) to determine the fairness and reasonable-ness of the proposal, to contact any and all client references, and to conduct site visits and investigations. An interview and presentation may be required. At the conclusion of this process, PROPOSERS in the competitive range will be asked to submit a BAFO, which will include final price proposals. After the submittal of BAFOs, the Evaluation Committee will score the BAFOs and prepare its recommendation for Agreement award.

Notwithstanding the above, RABA reserves the right to make the award under the RFP based upon the initial proposals submitted, without establishment of a competitive range or discussions and submission of BAFOs.

RABA Board Makes Final Determination

After the review and scoring of the BAFOs, the Transportation Manager, or designee shall submit the Evaluations Committee's recommendation for

Agreement award to the RABA Board. After review and consideration of this recommendation, the RABA Board shall have the discretion to: 1) award the Agreement to the PROPOSER whose proposal is most advantageous to RABA, price and other evaluation factors specified of the RFP considered, or 2) reject any and all proposals. The RABA Board is not bound by the recommendation of the Evaluation Committee.

Debriefing of Unsuccessful Proposers

Unsuccessful PROPOSERS shall be notified of RABA'S award of Agreement to the successful PROPOSER within five (5) working days of said decision.

When a contract is to be awarded on some basis other than price alone, unsuccessful proposers shall be debriefed upon their written request submitted to the Procurement Officer within a reasonable time. Debriefings shall be provided at the earliest time after the Procurement Officer makes a final determination recommending the award of the contract. The debriefing shall be conducted by Procurement Officer, or designee familiar with the rationale for the selection decision and contract award.

Debriefing shall:

- a. Be limited to discussion of the unsuccessful proposer's proposal and must not include specific discussion of a competing proposer's proposal,
- b. Be factual and consistent with the evaluation of the unsuccessful proposer's proposal, and
- c. Provide information on areas in which the unsuccessful proposer's technical proposal was deemed weak or deficient.

Notice of Contract Award

Award shall be made by mail, e-mail, and/or personal delivery to the successful proposer of a notice of award and the proper contract documents. RABA will finalize the execution of the contract and send a copy to the successful proposer. In addition, RABA will notify all unsuccessful proposers of its intent to award a contract to the successful proposer at the same time it notifies the successful proposer if RABA Board approval is not required, and at the same time as the publication of the RABA Board agenda if RABA Board approval is required.

Final Contract Draft

The contract will be drafted by the RABA Attorney or Procurement Officer and reviewed by legal counsel for appropriate language and terms. The Transportation Manager (or designee) will ensure that the contract is executed at the approval level required in these procedures.

Three or more original signed copies of each contract will be executed by RABA and the contractor. The Procurement Officer will maintain one original of the contract and distribute the others to appropriate parties including at least one original to the contractor.

Project Completion

All original documentation related to each procurement such as the RFP, successful proposal, BAFO, control record, agenda report, background data, evaluation criteria and scores, and meeting reports/notes will be submitted to the Procurement Officer for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of four years after the project is closed out and completed unless a different time period is mandated by a funding entity.

Negotiated procurement records or files should provide at least the following pertinent information: Justification for the use of negotiation in lieu of competitive bidding, contractor selection, justification for contract type, determination and findings, record of negotiations, and cost or price analysis.

13. Architectural / Engineering Services Request for Proposal (qualifications-based) (RFQ)

The Architectural / Engineering Request for Proposal qualifications-based process (RFQ) will be used for the procurement of architectural and engineering ("A/E" hereafter) services and related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services.

Following this method, competitors' qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation. When this method is used specifically for architectural or engineering services, RABA may not consider price as an evaluation factor in determining the most qualified offeror. Negotiation is conducted with only the most qualified offeror. If this method is used for other types of services, price may be considered and negotiations may be conducted in the same manner as the RFP process.

Issuance of an "A/E" RFQ

- a. The Project Manager shall initiate an approval to solicit, in accordance with the procedures set forth in this document at the start of the RFQ process.
- b. A notice of a RFQ will be prepared by the Procurement Officer, and will be advertised as a public notice, and if the value of the procurement is over \$25,000, must be published in a newspaper of general circulation no less than two weeks prior to the date set for receipt of proposals. The notice must include the following minimum information:
 - i. A general description of the services,
 - ii. Where to request a RFQ,
 - iii. The location, day and time of the Pre-Proposal Conference (If one is held),

- iv. The location, last day and hour proposals will be accepted (deadline), and
- v. Whether Federal funds are being used for the procurement.

“A/E” RFQ Packet

The Procurement Officer will coordinate the release of the RFQ packet. The RFQ packet will include the following:

Instructions To Proposers – General instructions concerning the proposal format, pre-contractual expenses, contract conditions, pre-proposal conferences, and other information.

Attachments – Required forms to be completed by the proposer and submitted with the proposal.

Exhibits – These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the services needed in order for the proposers to properly respond to the RFQ.

Scope of Work – Each RFQ will contain a statement or scope of work prepared by the Project Manager which provides a clear and accurate description of the technical requirements for the materials, products, or services being produced. A statement or scope of work should only state the actual minimum needs of RABA, and be developed in a manner designed to promote full and open competition. At a minimum, the statement or scope of work should address the following areas:

- i. A detailed description of the work to be performed outlining various tasks or phases to be performed, and defining the limits of the proposed project;
- ii. A requirement for periodic reporting or progress on the project if the procurement involves consultant or professional services;
- iii. A proposed delivery schedule; and,
- iv. A proposed contract period.

A control record will be maintained by the Procurement Officer as RFQ packets are distributed to prospective bidders. The control record profiles the following information:

- i. Date and time RFQ packets are distributed
- ii. Names and addresses of vendors receiving the RFQ and attending the pre-proposal conference

The control record has two primary purposes:

- i. Serves as a mailing list for the issuance of addenda, and
- ii. Provides a record for verification in cases of vendor protests and other issues

Pre-Proposal Conference

A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFQ has been issued and before the proposals are received. The pre-proposal conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by prospective proposers is not mandatory. Minutes of the conference and the list of attendees will be issued to all prospective proposers who attended the conference.

The pre-proposal conference shall be chaired by the Procurement Officer, and shall follow the guidelines below:

- a. Discuss basic requirements such as instructions to the proposers, funding, contract type, evaluation criteria, and specific points that should be addressed in each proposal;
- b. Discuss the participation requirements for disadvantaged business enterprises (DBE);
- c. Discuss the scope of work; and,
- d. Conclude by announcing when and where the proposals are due and by restating the requested proposal length and maximum pages in scope of work.

Amendments of "A/E" Requests for Proposals (RFQ)

If after issuance of requests for proposals, but before the time set for receipt of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFQ such changes shall be accomplished by issuance, in writing, of an addendum to the RFQ. Before issuing an addendum to an RFQ, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective proposers of an extension of time by facsimile or telephone. Such notification should be confirmed in the addendum. The addendum shall be sent to each prospective proposer to whom the RFQ was furnished.

Any information given to a prospective proposer concerning an RFQ shall be furnished promptly to all other prospective proposers as an addendum to the RFQ. No award shall be made on the request unless such addendum has been

issued in sufficient time to permit all prospective proposers to consider such information in submitting or modifying their proposals.

The RFQ will indicate that RABA is not bound by any oral representations, clarifications, or changes made in the written specification by RABA's employees, unless such clarification or change is provided to potential proposers in written addendum form from RABA .

Each amendment issued to a request for proposals shall:

- a. Be serially numbered and dated.
- b. Include the number, date and a description of the original RFQ concerned.
- c. Clearly state the changes made in the RFQ and the extension of the due date, if any.
- d. Include instructions to bidders for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge or return the amendment.

Cancellation of an "A/E" RFQ

RABA has the right to cancel RFQ's at any time.

Receipt of Proposals

Proposals shall be submitted so as to be received at the location designated in the RFQ not later than the exact time set for the receipt of proposals. The only acceptable evidence to establish the time of receipt at RABA's offices is the time/date stamp of RABA which shall be placed on the proposal wrapper immediately upon receipt. The RABA staff person receiving the proposal shall sign the exterior of the proposal package to verify the date and time received and person receiving the proposal. The timeliness of proposals is the sole responsibility of the proposer.

Withdrawal of Proposals

Any proposer may withdraw their proposal at any time.

Format of Proposal

The response to each RFQ must be made in accordance to the requirements set forth in the RFQ, both for mandatory content and for sequence. Noncompliance on the inclusion of conditions, limitations, or misrepresentations may be cause for rejection of a proposal.

Evaluation and Contract Negotiation

The steps to be used for proposal evaluation and contract negotiation for A/E and related services solicitations are as follows:

- a. An evaluation committee shall be established by the Project Manager to review eligible firms and all responses to a RFQ.
- b. Evaluation Committee evaluates the firms based on:
 - i. Professional qualifications for performance of the required services;
 - ii. Specialized experience and technical competence in the type work required;
 - iii. Ability to accomplish the work in the required time; and,
 - iv. Past performance in terms of cost control, quality of work and compliance with performance schedules.
- c. Evaluation team holds discussions with the most highly qualified firms ("short list"), if necessary.
- d. Evaluation team prepares a selection report for the Executive Officer recommending, in order of preference, those firms that are considered to be the most highly qualified to perform the required services. The report should include a description of the discussions and evaluations by the team to allow the Executive Officer to review the basis upon which the recommendations were made. The Executive Officer shall not add firms to the selection report. If recommended firms are deemed to be unqualified or the report is inadequate, the Executive Officer shall document the reasons therefore and return the report to the evaluation team for appropriate revision.
- e. The final selection shall be made by the Executive Officer from a list of the most highly qualified firms prepared by the evaluation team. The Executive Officer will list those firms in order of preference for negotiating a contract.
- f. After the final selection has taken place, RABA may release information identifying only the A/E firm with which an attempt will be made to negotiate a contract. If negotiations are terminated without awarding a contract to the highest rated firm, RABA may release information that negotiations will take place with the next highest rated firm.
- g. The final selection authorizes negotiations to begin with the most qualified firm, which will be requested to submit a proposal that includes fees and cost estimates.

- h. The negotiation of compensation to the contractor should represent a fair and equitable payment for the services performed. At this stage, negotiations must take place not only on the amount of compensation, but also the method of payment.
- i. In determining the amount of compensation and the method of payment, consideration shall be given to:
 - i. Scope and complexity of designs, surveys and other work and the skills necessary for these services.
 - ii. Quality and quantity of data provided to the A/E by RABA.
 - iii. Location of, and conditions under which, the services will be performed
 - iv. Date services to begin and time allowed for performance
- j. Costs should be negotiated taking into consideration:
 - i. Direct Labor
 - ii. Overhead
 - iii. General and administrative expenses
 - iv. Materials
 - v. Other direct costs

Profit, which is further influenced by:

 - i. Degree of A/E's risk
 - ii. Level of effort
 - iii. Level of talent or expertise and A/E must furnish
 - iv. Amount of subcontracting
 - v. Amount of top level a/E management involved
 - vi. Subcontracts
 - vii. Contractor's investment
- k. When the contract is negotiated and signed, the negotiations are documented and placed in the file.
- l. The contract shall be monitored to ensure that expenditures and payments therefore are commensurate with performance and that both have met all the terms of the contract.
- m. The contractor is responsible for the professional quality, technical accuracy and coordination of all services under the contract. The contractor may be liable to RABA for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.

14. **Sole Source Procurements**

A sole source procurement is a purchase accomplished through solicitation or acceptance of a proposal from only one source; or, if after solicitation of a number of sources competition is determined inadequate. A sole source purchase must be documented as to the reasons why only one supplier is acceptable. This documentation is normally furnished by the originating department and verified by the Procurement Officer, who is responsible for making the final determination on sole source procurements.

The following areas must be considered in sole source determinations: A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement.

Sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

- a. The item is available only from a single source;
- b. The public exigency or emergency (i.e., a threat to public health, welfare, safety, property or other substantial loss to RABA, or a situation requiring immediate action by RABA, as determined by RABA) for the requirement will not permit a delay resulting from competitive solicitation;
- c. FTA authorizes noncompetitive negotiations;
- d. After solicitation of a number of sources, competition is determined inadequate; or
- e. The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (1) that such manufacturer or supplier is the only source for such item; and (2) that the price of such item is not higher than the price for such item by like customers.

A cost analysis, i.e., verifying the proposed cost data, the projection of the data, and the evaluation of the specific elements of costs and profit, is required.

The Procurement Officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.

15. **State Bid/Piggybacking/Consortium Purchases**

RABA may use State and local intergovernmental agreements for procurement or use of common goods and services. When obtaining goods or services in this manner, RABA must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the grantee's purchase document.

RABA may also jointly procure goods and services with other grantees. When obtaining goods or services in this manner, RABA must ensure all Federal requirements, required clauses, and certifications are properly followed and included, in the resulting joint solicitation and contract documents.

RABA may assign contractual rights to purchase goods and services to other grantees if the original contract contains appropriate assign ability provisions. If RABA obtains these contractual rights (commonly known as “piggybacking”), it may exercise them after first determining the contract price remains fair and reasonable.

16. Emergency Procurements

Emergency procurements (defined as purchases immediately necessary for the preservation of life or property, or to prevent an immediate termination of a critical RABA function or activity) will be handled immediately and expedited as required. The Procurement Officer has the authority to approve the purchase of all goods and services in emergency conditions. If the Procurement Officer is unavailable to authorize an emergency procurement, the Executive Officer may provide the necessary authorization. Upon completion of the emergency procurement, the Procurement Officer will document the actions taken and execute a proper requisition.

17. Amendments and Change Orders

- a. An amendment is any change to a contract, task order, or work order for any professional services including all architectural and engineering services that alters the terms and conditions of the original document. Any change in the scope of a contract that increases the cost of the contract must follow the Sole Source Procurement procedures. Amendments are formal changes that must be approved at the same signature authority level as the original document.
- b. RABA shall have the right, based on a clause contained in each contract for construction or the delivery of goods and services other than those listed in subsection (a) above, to issue a change order to correct errors, omissions, or discrepancies; to cover acceptable overruns; to expand or reduce the scope of the contract; or to direct other changes in contract execution to meet unforeseen field, regulatory or market conditions. All change orders must be approved in advance in accordance with the value of the change order or the calculated value of the time extension. In addition, RABA shall have the unilateral right, based on a clause contained in each contract, to issue an immediate change order and negotiate cost and price for time and materials after the issuance of the change order.
- c. All amendments and change orders shall be submitted to the Procurement Officer complete with explanations and back up information and, when applicable, a detailed breakdown of charges for review and/or recommendation of approval.
- d. Verification of Amendments and Change Orders: The Procurement Officer will verify all amendments and change orders as to the:

- i. Appropriateness of the modification of the contract and whether it is unreasonable to do a separate bid for the item under consideration.
- ii. The methods of calculating the amount of the amendment or change order are in conformance with the terms of the contract.
- iii. The issuance of change orders for each individual contract shall be handled by the Procurement Officer.

18. Blanket Purchase Orders

The Procurement Officer will issue a blanket purchase order for goods or services based, if possible, on competitive quotations to procure items on an as-needed basis.

19. Purchase Requisition/Order Procedures

Step 1: Purchase Requisition

- a. All purchases above the small purchase threshold begin with a purchase requisition. The Project Manager shall prepare and submit the purchase requisition to the Procurement Officer completing all sections including unit cost and total cost estimates.
- b. The Project Manager is responsible for the completeness and accuracy of the purchase requisition. The Project Manager is responsible for ensuring the availability of funds in the proper account. To ensure a need exists for the item to be requisitioned, before purchase is made, a complete and accurate description of the item must be provided, along with all other information necessary to make the procurement decision.
- c. A properly completed Purchase Requisition includes: a description of the item to be procured, the quantity needed, unit cost, total cost, and all vendor quotations, where appropriate. The description section shall provide detailed specifications regarding the item to be purchased and, when applicable, when and where the service will be performed or when and where the items will be delivered.
- d. The account name and number must be provided by the fiscal manager to determine which account will be expensed when the requisition is invoiced. If the procurement is to be expensed against more than one account code, all accounts should be listed.

Step 2: Approval of Purchase Order

- a. Purchase Order numbers may only be assigned by the Fiscal Manager or designee and only following receipt of a completed purchase requisition. The Fiscal Manager or designee will review the purchase requisition and all documentation to ensure its completeness and accuracy. (While RABA staff and administration are provided by the City of Redding, RABA may use the number assigned by the City of Redding Purchasing staff through the City of Redding's purchasing process.)
- b. Following the above review, the Fiscal Manager or designee will assign the next consecutive Purchase Order number.
- c. Purchases are handled by orally notifying the vendor of the approved Purchase Order number. Written confirmation will be sent to the vendor, if appropriate. The method of purchase may be specified on the Purchase Requisition.
- d. Vendors should be told to include their Purchase Order number on all correspondence, including packages, invoices, credit memos, etc.

Step 3: Receipt of Goods/Services and Authorization to Pay

- a. Receipt of Goods: The Project Manager is responsible for receipt of the physical merchandise ordered. Upon receipt, the packing slip shall be compared to the goods received. If correct, the Project Manager or designee will forward the resulting invoice to the accounting department (or City of Redding purchasing staff, while RABA staff and administration is provided by the City of Redding) to authorize payment.
- b. Receipt of Services: The Project Manager is responsible for the receipt of services. Upon completion, the Project Manager shall match and approve all invoices that confirm the proper completion of services performed and forward the approved invoice to the accounting department to authorize payment.
- c. The Project Manager or designee must approve all payments.

20. Vendor Protest Procedures

Purpose

The purpose of these procedures is to set forth the procedures to be utilized by RABA in considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract whether before or after award.

General

In order for a bid protest to be considered by RABA, it must be submitted by an interested party (as defined below in accordance with the procedures set forth herein). A protest which is submitted by a party which is not an interested party or which is not in accordance with the procedures shall not be considered by RABA, and will be returned to the submitting party without any further action by RABA.

Definitions

For purposes of these Bid Protest Procedures:

- a. The term "Bid" includes any bid or offer submitted by a bidder in response to an Invitation for Bid (IFB), and a proposal submitted by an offeror in response to a Request for Proposals (RFP).
- b. The term "contract" means that document to be entered into between RABA and the successful bidder and offer or.
- c. The term "days" refers to normal business days of RABA staff offices.
- d. The term "interested party" means any person: (1) who is an actual or prospective proposer, bidder, or offeror in the procurement involved; and (2) whose direct economic interest would be affected by the award of the contract or by failure to award a contract.
- e. The term "solicitation" means an Invitation for Bids (IFB), Request for Proposals (RFP), or other form of document used to procure equipment or services.

Grounds for Protest

Any interested party may file a bid protest with RABA on the grounds that:

- a. RABA has failed to comply with applicable Federal or State Law;
- b. RABA has failed to comply with its procurement procedures;
- c. RABA has failed to comply with the terms of the solicitation in question, including the failure to adhere to the evaluation criteria set forth in the solicitation, if applicable;
- d. RABA has issued restrictive or discriminatory specifications; or,

- e. Award is made to other than the lowest responsive and responsible bidder on formally advertised (IFB) procurements.

Contents of Protest

- a. A bid protest must be filed in writing and must include:
 - i. The name and address of the protestor.
 - ii. The name and number of the procurement solicitation.
 - iii. A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provision of RABA procurement procedures, or specific term of the solicitation alleged to have been violated.
 - iv. Any relevant supporting documentation the protesting party desires RABA to consider in making its decision.
 - v. The desired relief, action, or ruling sought by the protestor.
- b. Protests must be filed with:

Redding Area Bus Authority
777 Cypress Avenue
Redding CA 96001
Attn: Executive Officer
- c. All protests must be received at the RABA address listed above during normal office hours of 8:00 a.m. to 5:00 p.m., Pacific Standard or Daylight Time.
- d. If any of the information required by this section is omitted or incomplete, RABA will notify the protestor, in writing, within one day of the receipt of the protest, and the protestor will be given one day to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.

Timing Requirements and Categories of Protests

RABA will consider the following categories of bid protests within the time period set forth in each category:

- a. Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed no later than five (5) days prior to the scheduled bid opening or deadline for submittal or proposals, as appropriate, in order to be considered by RABA. Any protest based on such grounds not filed within this period will not be considered by RABA.

This category of protests includes, but is not limited to, allegation of restrictive or exclusionary specifications or conditions.

- b. Any bid protests regarding the evaluation of bids or proposals by RABA, or improprieties involving the approval or award or proposed approval or award of a contract must be filed with RABA no later than 72 hours after the protestor's receipt of RABA's written notice of its decision or intended decision to award a contract. Any protest filed after such date which raises issues regarding the bid proposal evaluation, or the contract approval or award will not be considered by RABA.

Review of Protest by RABA

- a. RABA will notify the protestor within three (3) days of timely receipt of a bid protest that the protest is being considered.
- b. In the notification, RABA will inform the protestor of any additional information required for evaluation of the protest by RABA, and set a time deadline for submittal of such information. If RABA requests additional information, and it is not submitted by the stated deadline, RABA may either review the protest on the information before it, or decline to take further action on the protest.
- c. In its sole discretion, RABA may give notice of any bid protest to other bidders or proposers for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to RABA relative to the merits of the bid protest. RABA will set a time deadline for the submittal of such comments, which will be no less than 5 days after RABA provides notification of the protest.
- d. In its sole discretion, RABA may schedule an informal conference on the merits of a bid protest. All interested parties will be invited to participate in the conference. Any information provided at the conference will only be considered by RABA in deciding the bid protest if it is submitted to RABA in writing within 3 days after the conference.

Effects of Protest on Procurement Actions

- a. Upon receipt of a timely protest regarding either the solicitation process of the solicitation documents in the case of sealed bids, RABA will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however, change the date on which bids are due, unless RABA determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all bidders.
- b. Upon receipt of a timely protest regarding evaluation of bid or proposals, or the approval or award of a contract, RABA will suspend contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.

- c. Notwithstanding the pendency of a bid protest, RABA reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the contract in the following cases:
 - i. Where the item to be procured is urgently required;
 - ii. Where RABA determines, in writing, that the protest is vexatious or frivolous;
 - iii. Where delivery or performance will be unduly delayed, or other undue harm to RABA will occur, by failure to make the award promptly; or,
 - iv. Where RABA determines that proceeding with the procurement is otherwise in the public interest.

Summary Dismissal of Protests

RABA reserves the right to summarily dismiss all or any portion for a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by RABA in a previous bid protest by any interested party in the same solicitation or procurement action.

Protest Decisions

- a. After review of a bid protest, the Transportation Manager shall make a recommendation to the RABA Manager of the appropriate disposition of such protest.
- b. The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences, and RABA's own investigation and analysis.
- c. If the protest is upheld, RABA will take appropriate action to correct the procurement process and protect the rights of the protestor, including resolicitation, revised evaluation of bids or proposals or RABA's determination, or termination of the contract.
- d. If the protest is denied, RABA will lift any suspension imposed and proceed with the appropriate state of the procurement process or the contract.

Judicial Appeals

A protest adversely affected by a bid protest decision may appeal such decision to an appropriate court of the State of California.

Federal Transit Administration Appeals (Only if Federal funds are used in the procurement)

- a. A protestor adversely affected by a bid protest decision of the Executive Officer may submit a protest to the Federal Transit Administration (FTA) in accordance with the provisions of FTA Circular 4220.1E, as currently in effect as of the date of RABA's decision on the bid protest.
- b. Under the provision of the FTA Circular, FTA will only review protests regarding:
 - i. The alleged failure of RABA to have written protest procedures or the alleged failure to have followed such protest procedures, or
 - ii. The alleged failure to review a complaint or protest, or
 - iii. Alleged violations of Federal law or regulation.
- c. In accordance with the FTA Circular, such protest must be filed no later than 5 days after the protest knew or should have known of RABA's alleged failure listed above.
- d. Under the following conditions, RABA may proceed with the procurement in spite of a pending protest to the FTA:
 - i. The items to be procured are urgently required;
 - ii. Delivery or performance will be unduly delayed by failure to make the award promptly; or,
 - iii. Failure to make prompt award will otherwise cause undue harm to RABA or the Federal Government.

CHAPTER III

Contract Administration

A. Contract Administration Guidelines

1. A Notice to Proceed will be issued on all projects that must start work before a contract is executed.
2. Letter agreement is sufficient for projects with a specific scope of work and are \$25,000 or less.
3. A full contract agreement will be done for all other projects.
4. All agreements will be assigned a contract number, which must be referred to on the Purchase Order and the contractor's invoices.
5. Once the Notice to Proceed or agreement is signed, the Project Manager will originate the contract face sheet to encumber the funds. The contract face sheet is sent to the City of Redding fiscal manager and must include the vendor name, vendor number, contract amount, contract term, accounting codes, and a copy of the agreement.
6. The Procurement Officer or Project Manager will approve all invoices before payment is issued.
7. A contract amendment is necessary for a change in scope of work, term, or compensation and must be completed before additional work or payment is authorized.
9. A copy of the procurement document must be included with the contract files, including an explanation of the process used in procuring the goods or services.
10. The Procurement Officer will issue a letter of completion to the contractor.

B. Federal Procurement Requirements

Since RABA receives FTA operating and capital assistance, Federal procurement requirements apply to all Federally funded operating and capital procurements undertaken in support of RABA's mass transit operations. Some of these requirements are unique and pertain only to Federally funded procurements. Listed below are those specific contract terms and/or regulatory or administrative requirements that only apply when Federal funds are being utilized for the procurement. Note that the requirements of the Americans with Disabilities Act, the Equal Opportunity provisions of the Civil Rights Act of 1964, as amended, and the FTA's Drug and Alcohol Testing Requirements (49 CFR Parts 655) apply to all procurements (if applicable) even if Federal funds are not utilized.

1. State or local geographic preferences, except those expressly mandated or encouraged by Federal statute, are prohibited.
2. For procurements over \$100,000, the Buy America requirements set forth in 49 CFR part 661 apply.
3. Any procurement involving equipment, materials, or commodities suitable for transport by ocean vessel shall contain the clauses required by 49 CFR Part 381: Cargo preference - U.S. Flag Vessels.
4. In the procurement of rolling stock, the requirements of 49 CFR Part 663 concerning Pre-Award and post-Delivery Audits apply.
5. In the procurement of buses, the requirements of 49 CFR Part 665 concerning Bus Testing apply.
6. For public works/construction projects, the requirements of 49 CFR Part 41 (specifically Part 41.117: Seismic safety) apply.
7. For public works/construction projects or activities exceeding \$2,000, the requirements of the Davis-Bacon Act (40 U.S.C. 276a - 276a(7)) and implementing Department of Labor regulations apply.
8. For public works/construction projects in excess of \$2,000, the provision of the Copeland Anti-Kickback Act (40 U.S.C. 276c) and implementing Department of Labor regulations apply.
9. For public works/construction projects, the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-222) and implementing Department of Labor regulations apply.
10. For any contract of over \$100,000, the third party contractor will be required to complete and submit certification forms, and, if appropriate, lobbying disclosure forms concerning compliance with 31 U.S.C. 1352.
11. Each third party contractor must acknowledge that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal government reserves the right to impose penalties under the Program Fraud Civil Remedies Act of 1986.
12. Each third party contractor is required to acknowledge the mandatory standards and policies related to every efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et. seq.).
13. For public works/construction projects, each third party contractor must agree to comply with any Federal environmental and resource conservation requirements that apply to the construction activities under the terms of the Contract. The contractor is required to report any violation of standards, orders or regulation issued under the Clean Air Act (42 U.S.C. 7401 et. seq.) or the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.) resulting from any activity of the

contractor in connection with the performance of the contract to FTA and to the appropriate U.S. EPA regional office. The contractor is responsible for the disposal of hazardous materials, in accordance with applicable Federal, state and local law and guidelines.

14. Each third party contractor for contracts over \$25,000 must certify that they will not enter into contracts for over \$25,000 with suspended or debarred contractors (Executive Order 12549; 49 CFR part 29).
15. Each third party contractor must comply with Civil Rights requirements concerning nondiscrimination and equal employment opportunity (29 U.S.C. 623; 42 U.S.C. 2000, 6102, 12112; 12132; 49 U.S.C. 5332; 29 CFR. Part 1630; 41 CFR. Parts 60 et. Seq.).
16. Each third party contractor must comply with appropriate Patent and Rights in Data requirements (37 CFR. Part 401 and 49 CFR. Part 18).
17. Each third party contractor must comply with the Department of Transportation Disadvantage Business Enterprise (DBE) regulations (49 CFR. Part 26).
18. Fly America. Each third party contractor must comply with 49 U.S.C. 40118 in accordance with the General Service Administration's regulations at 41 CFR Part 301-10.

C. Bonding Requirements

1. Purpose

To ensure uniform and equitable application of bonding requirements in compliance with state and Federal regulations, protect the interests of RABA.

2. Responsibility

It shall be the responsibility of the Procurement Officer to ensure that these guidelines are followed and applied impartially.

3. Types of Bonds

Bid Guarantee: This shall consist of a firm commitment, such as a bid bond, certified or cashier's check, or other negotiable instrument accompanying a bid as assurance the bidder will, upon acceptance of the bid by RABA, execute such contractual documents as may be required within the time specified. RABA will require bid bonds for all public works/construction projects, for any equipment or services contract of a critical nature to the operations of RABA, or for any equipment contract in which the equipment is specifically manufactured for RABA. Public works/construction projects require a bid bond of ten percent (10%) of the amount bid. Equipment purchases and service projects requiring a bid bond will have a bond requirement of up to five percent (5%) of the amount bid. RABA will require proposal bonds for any equipment or services contract of a critical nature to the operations of RABA. Service projects requiring a proposal

bond will have a bond requirement of up to five percent (5%) of the amount bid. Failure of bidders to comply with these requirements will result in a determination by the Procurement Officer that the bid is non-responsive.

Performance: This is a bond executed in connection with a contract to secure fulfillment of all the Contractor’s obligations under such contract. Performance bonds shall be written by a corporate surety registered in the State of California. RABA will require performance bonds for all public works/construction projects, for any equipment or services contract of a critical nature to the operations of RABA, or for any equipment contract in which the equipment is specifically manufactured for RABA. Public works/construction projects require a performance bond of 100 percent (100%) of the amount of the contract. Equipment purchases requiring a bond will have a bond requirement of up to twenty percent (20%) of the amount of the contract. Service projects requiring a bond will have a bond requirement of up to twenty percent (20%) of the amount of the contract.

Payment: This is a bond 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 bonds shall be written by a corporate surety registered in the State of California. RABA will require a bond for public works/construction contract over \$25,000. The required payment bond will be 100 percent (100%) of the amount of the contract.

4. Procedures

Bid guarantees and performance bonds are required by the State of California for all public works/construction projects in excess of \$6,500. Payment bonds are required by the State of California for all public works/construction projects in excess of \$25,000.

Bid guarantees and/or performance bonds are not required unless the procurement involves equipment or services of a critical nature to the operations of the agency and/or is specifically manufactured for the agency thereby making procurement from another source difficult or time consuming. Payment bonds are not required under these circumstances.

Bonding levels are:

Type of Project	Type of Bond		
	Bid	Performance	Payment
Public Works/Construction (as applicable)	10%	100%	100%
Materials and Equipment (as applicable)	up to 10%	up to 20%	up to 100%
Services (except for personal or professional)	up to 10%	up to 100%	up to 100%

Forfeiting of Bonds: All contracts that contain bonding requirements shall contain a clause allowing termination on default of the contractor and providing that in such cases the surety company shall bear the responsibility for the completion of the contract, or if no surety company has provided a performance bond, RABA will claim the alternate to the performance and payment bond and use such funds for the completion of the contract.

D. Insurance Requirements

Insurance requirements vary depending on the project type. They may include provisions for personal injury, environmental liability and other areas. The insurance requirements for each project are established by RABA.

In assessing risk management, RABA will consider the following project information:

- Scope of work
- Contract amount
- Whether the project requires the contractor to operate on RABA property
- The ultimate use of the good or service provided by the contractor
- Previous experience associated with similar or related projects

Once the insurance requirements are defined, they must be included in the procurement document.

Prior to issuing the final contract, the RABA Risk Manager or designee shall approve the insurance certificate. A copy of the insurance certificate is to be kept in the project file.

The Procurement Officer shall not allow any contract to continue without proper insurance in effect after notification of the lapse of requisite insurance

E. Liquidated Damages

The Procurement Officer and the Project Manager, will determine whether the use of a liquidated damages provision is appropriate for each specific procurement. The amount of liquidated damages must be reasonable, shall be set at a specific rate for each day of overrun in contract time for a public works/construction contract or for delivery of goods, or for each instance of an incident giving rise to imposition of liquidated damages in a service contract, and the rate must be specified in the contract.

A liquidated damages clause may be used if it is determined that:

- The time of delivery of goods or services to RABA is critical, and RABA can expect to suffer damage if the delivery is delinquent.
- The extent or amount of such damage would be difficult or impossible to determine.

F. Indemnification

All contracts shall provide that the contractor shall indemnify and save harmless RABA, its officers, agents and employees from any injuries or damages received by any person during any operations connected with the contract, by use of any improper materials, or by any act or omission of the contractor or his subcontractor, agents, servants or employees.

G. Termination

1. Termination for Convenience

All contracts shall contain a provision allowing for the termination of the contract for convenience by RABA and prescribe methods in which the contractor may calculate cost of work already performed, and termination settlement costs. All contracts supported by Federal grants that exceed \$10,000 are to include provisions that allow RABA to terminate the contract, and that stipulate the manner by which termination will be made and the basis for settlement. The contract provisions read as follows:

“Termination of Convenience. This Agreement may be terminated by either party for any reason and at any time by giving no less than thirty (30) days written notice of such termination to the other party and specifying the effective date thereof; provided, however, that no such termination may be effected by RABA unless an opportunity for consultation is provided prior to the effective date of the termination.

Disposition of, Title to, and Payment for Work upon Expiration or Termination. Upon expiration of this Agreement or termination for cause under Paragraph _____ or termination for the convenience of a party under Paragraph _____, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of RABA, the property of and shall be promptly returned to RABA, although Contractor may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by Contractor under this Agreement shall be deemed a “work made for hire” for purposes of copyright or patent law and only RABA shall be entitled to claim or apply for the copyright or patent thereof. Payments by RABA to the Consultant (or Contractor) shall be made by the date of termination but not thereafter except as otherwise provided, settlement of claims by the Consultant (or Contractor) under this termination Section shall be in accordance with the provisions set forth in 48 CFR Part 49, as amended from time to time.”

2. Termination for Default

All contracts shall contain a provision allowing for the termination of the contract for default by RABA. All contracts supported by Federal grants that exceed \$10,000 are to include provisions that allow RABA to terminate the contract, and that stipulate the manner by which termination will be made and the basis for settlement. The contract provisions read as follows:

“Termination for Cause. If either party shall fail to fulfill in a timely and proper manner that party’s obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within thirty (30) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving thirty (30) days written notice t the defaulting party in the manner set forth in Paragraph _____ (Notices).”

H. Dispute Resolution

According to FTA Circular 4220.1E (Paragraph 7.k) or as amended, FTA requires that:

“Grantees alone will be responsible in accordance with good administrative practice an sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the grantee of any contractual responsibility under its contracts.”

RABA is not required to include a dispute resolution clause in its contracts but every effort should be made to resolve disputes between the contractor and RABA. An example of a process that might be used is as follows:

1. Any dispute between the Consultant (or Contractor) and RABA relating to the implementation or administration of the Contract may be attempted to be resolved through the following process:
2. The parties shall first attempt to resolve the dispute informally in meetings or communications between the Consultant (or Contractor) and the Project Manager (for each individual contract). If the dispute remains unresolved 15 days after it first arises, the Consultant (or Contractor) may request that the Project Manager issue a recommended decision on the matter in dispute. The Contracting Officer shall issue the recommended decision in writing and provide a copy to the Consultant (or Contractor).
3. The recommended decision of the Project Manager shall become final unless, within 15 days of receipt of such recommended decision, the Consultant (or Contractor) submits a written request for review to the Executive Officer. In connection with any such review, the Consultant (or Contractor) and the Project Manager shall be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review by the Executive Officer, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California.
4. Pending final resolution of a dispute under this Section, the Consultant (or Contractor) shall proceed diligently with performance in accordance with the Contract and the Project Manager’s recommended decision.

I. Final Contract Approval and Distribution

1. Contract Approval

Certain approval levels may be required as outlined in Chapter II. If RABA Board approval is required, the Project Manager should draft the Agenda Report in such a manner as to authorize the Executive Officer or designee to negotiate and execute the final contract terms.

The process for final contract approval is as follows:

- a. RABA Board authorization (if required) is received
- b. Draft contract is developed and approved by the Executive Officer, legal counsel and the contractor.
- c. Final contract is signed by all parties and distributed

2. Contract Distribution

The Procurement Officer has the responsibility for final contract distribution and issuance of the Notice to Proceed. Copies of the final contract are sent to the following persons: Project Manager, Contractor, and RABA fiscal manager.

J. Written Record of Procurement History (Project Control File)

The project control file shall be maintained by the Procurement Officer during the procurement process, throughout the term of the contract and for five (5) years following completion of all work.

The control file consists of the following sections:

1. Vendor list and copy of notice (if required)
2. Rationale for type of procurement used
3. Rationale for selection of contract type
4. Independent Cost Estimate
5. List of all vendors responding to the procurement
6. All documentation relating to the selection process, including, but not limited to: evaluation score sheets, bids, rationale for selection and/or rejection of respondents, the basis for the contract price, and the source selection plan
7. Notice to Proceed
8. Final contract
9. RABA Board report, if required
10. Purchase Requisition
11. All correspondence
12. Change Orders
13. Cost/price analyses to support change orders
14. Proof of insurance
15. Bond documents
16. Notice of Solicitation

17. Legal advertisement
18. Original procurement document and all addenda
19. Original responses to the procurement
20. DBE information
21. Returned mail

For additional documentation requirements for rolling stock purchases, please see Appendices A, B, and C of this manual.

K. Vendor List

The RABA vendor/consultant list consists of a listing of active business, organizations, and enterprises that could provide quality goods and services specific to RABA.

A vendor may be declared “not responsible” and removed from the vendor list if the vendor:

1. Repeatedly misses deadlines in deliveries of goods and services, or
2. Provides unsatisfactory goods and services.

Before declaring a vendor to be “not responsible,” the Procurement Officer will make every effort to give the vendor an opportunity to correct the problem. The following steps must be followed:

1. Notify vendor of possible disqualification from vendor list.
2. If no response to the first notice is received, issue a second notice.
3. If no response to the second notice is received, the third notice will be issued informing the vendor that it has been deemed “not responsible” and removed from the Vendor file effective ten days from the date of the third notice.

A file will be kept of all activity and communications with the vendor. All actions must be fully documented and the file will be retained for a period of no less than two years.

In order for a vendor to be reinstated into RABA’s vendor list, the vendor must file a request with the Procurement Officer in writing declaring to be a “responsible vendor.”

The reinstatement letter must include the following:

1. Reason vendor failed to respond to procurement requests.
2. Reason vendor provided slow or unsatisfactory deliveries.
3. Steps vendor has taken to eliminate slow or unsatisfactory deliveries.
4. Statement why vendor should be reconsidered as a responsible vendor.
5. Promise to maintain their responsible vendor status.

CHAPTER IV

Types of Contracts

Except as provided in this section, any type of contract that will promote the best interest of RABA may be used.

A. Fixed Price Contracts

1. Firm-Fixed Price

A firm-fixed price contract establishes a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

2. Fixed Price Contracts With Economic Price Adjustment

Fixed-price contracts may provide for price adjustments (upward or downward) when specified contingencies occur. These contracts are typically used when there is serious doubt about the stability of selected costs or prices over an extended period of contract performance.

B. Cost Reimbursement Contracts

A cost reimbursement contract is one in which the contractor is paid its reasonable, allocable, and allowable costs of performance regardless of whether the work is completed.

1. Procurement Officer shall use a cost reimbursement contract only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. In which case, a contract with an amount not to exceed shall be allowable.
2. The Procurement Officer may use cost reimbursement contracts only when the following circumstances apply:
 - a. The contractor's accounting system is adequate for determining costs applicable to the contract;
 - b. Appropriate RABA oversight during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and
 - c. The Procurement Officer determines, based upon discussions with the Project Manager that the lack of precision of the statement of work or the difficulty of accurately estimating the costs make the use of a fixed-price contract impractical.

3. Each cost reimbursement contract shall contain the following:
 - a. A clause, approved by the Procurement Officer indicating that only those costs determined to be reasonable and allocable will be reimbursable; and
 - b. A clause, approved by Procurement Officer, establishing a stated limitation of cost.
4. Cost plus percentage of cost contracts are prohibited.

C. Indefinite Delivery Contracts And Task Orders Contracts

1. The Procurement Officer may use an Indefinite Delivery type of contract (either a requirements contract or an indefinite quantity contract/Task order) when the exact quantities of supplies or services are not known at the time of contract award. The contract may also specify maximum or minimum quantities that RABA may order under each individual order and the maximum that RABA may order during a specified period of time.
2. There are several types of indefinite delivery contracts:
 - a. Definite-quantity contracts.
 - b. Requirements contracts.
 - c. Indefinite quantity (IQ) contracts (commodities).
 - d. Task order contracts (services).
3. Indefinite Delivery type contract are used when the Procurement Officer anticipates recurring requirements but cannot predetermine the precise quantities for supplies or services. The Procurement Officer shall include the following in each contract and solicitation for a requirements contract:
 - a. A realistic estimate of the total quantity or Dollar amount that will be ordered, based on the most current information available; and
 - b. A clause, approved by the Procurement Officer, stating that the estimate is not a representation to a bidder, offeror, or contractor that the estimated quantity will actually be required or ordered, or that conditions affecting the requirements will be stable or normal.
4. If feasible, a requirements type contract shall state the maximum limit of the contractor's obligation to deliver and RABA's obligation to order.
5. The Procurement Officer or his or her authorized designee executing orders under a requirements type contract shall obligate funds when each individual order is issued and may order from a requirements type contract within the limits

of the user department's budget authority for the items or services covered by the contract.

6. The Procurement Officer may use an Indefinite Quantity type of contract when the Procurement Officer cannot predetermine, above a specified minimum, the precise quantity of supplies or services that will be required during the contract period, and the Procurement Officer determines that it is inadvisable to commit RABA for more than a minimum quantity.
7. An Indefinite Quantity type contract shall require RABA to order and the contractor to furnish at least the stated minimum quantity of supplies. The contractor shall also be required to furnish if and as ordered, any additional quantities, not to exceed a stated maximum. The Procurement Officer shall ensure that the contract obligates the amount of budget authority needed to cover RABA's minimum required order under the contract.
8. The Procurement Officer shall include in the schedule of each requirements and Indefinite Quantity type of contract the names of RABA staff authorized to issue orders under the contract. When determined appropriate by the Procurement Officer, authorization for placing facsimile orders may be included in the contract; provided, that RABA shall establish procedures for obligating funds and confirming all such orders.
9. Each Indefinite Delivery contract issued must include a fixed dollar ceiling that represents the target "not to exceed" cost authorizations for the work specified.
10. In cases where multiple suppliers are awarded contracts, the file shall include Task Order/Delivery Order source selection and price justification to document negotiations, price reasonableness, and/or source selection decision.
11. Each order placed under an Indefinite Delivery/Task Order contract shall contain required minimum information needed for a contract.

D. Time and Materials/Not to Exceed Contracts

A time and material/not to exceed contracts can be used:

1. After a determination by the Procurement Officer that no other type of contract is suitable; and
2. If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

E. Labor Hour Contracts

Labor hour contracts are a variation of the time and materials contract, differing only in that materials are not supplied by the contractor. You should use this type of contract only when no other would be suitable, and you need to document your determination if you choose to use this type of contract.

F. Revenue Contracts

Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. In accordance with FTA Circular 4220.1E section 7(n), the extent of and type of competition required is within the discretionary judgment of the Procurement Officer.

G. Contract Term Limits

Contract term limits are specified below:

1. A contract for rolling stock or replacement parts funded with FTA funds may be entered into for any time period not to exceed five (5) years.
2. Contracts for supplies and services may be entered into for any time period considering that the time period is based on sound business practices and is consistent with the “full and open competition” principle expressed in FTA Circular 4220.1E.
3. Revenue contracts may have a period of performance beyond five (5) years if RABA believes it is in RABA best interest, including options.
4. Options are permitted provided the extensions, if any, are included in the solicitation.

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APPENDIX A

FTA REQUIRED CLAUSES LIST

FTA REQUIRED CLAUSES LIST					
Clauses	Professional Svcs/A&E	Operations/ Mgmt	Rolling Stock Purchase	Construction	Materials/ Supplies
1. Fly America	X	X	X	X	X
2. Buy America			X	X	X
3. Charter Bus/School Bus		X			
4. Cargo Preference			X	X	X
5. Seismic Safety	X (A&E)				
6. Energy Conservation	X	X	X	X	X
7. Clean Water	> \$100,000	>\$100,000	> \$100,000	> \$100,000	> \$100,000
8. Bus Testing			X		
9. Pre-Award/Post Audit			X		
10. Lobbying	X	X	X	X	X
11. Access to Records	X	X	X	X	X
12. Federal Changes	X	X	X	X	X
13. Bonding				> \$100,000	
14. Clean Air	> \$100,000	> \$100,000	> \$100,000	> \$100,000	> \$100,000
15. Recycling Products	> \$10,000	> \$10,000	> \$10,000	> \$10,000	> \$10,000
16. Davis-Bacon Act				>\$2,000	
17. Contract Work Hours			>\$100,000	>\$100,000	
18. Copeland Anti-Kickback				>\$2,000	
19. No Government Oblg	X	X	X	X	X
20. Program Fraud	X	X	X	X	X
21. Termination	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
22. Govt.-wide Debarment	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
23. Federal Privacy Act	X	X	X	X	X
24. Civil Rights	X	X	X	X	X
25. Breach of Contract	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000

26. Patent Rights	Only for Experimental, Developmental, or Research Work				
27. Transit Employees Protective Act		X			
28. DBE	X	X	X	X	X
29. State/Local Gov't Laws/Regulations	X	X	X	X	X
30. Incorporation of FTA Terms	X	X	X	X	X
31. Drug and Alcohol		X			
32. TS National Architecture	X	X	X	X	X
33. TVM Certifications			X		
34. Metric Requirements		X	X		
35. ADA Compliance	X	X	X	X	X
36. Notice of Federal Participation	>\$500,000	>\$500,000	>\$500,000	>\$500,000	>\$500,000

1. Drug and Alcohol Testing

49 U.S.C. A5331

49 CFR Parts 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 653 and 654, unless the contract is for 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 653 and 654, respectively, 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 653 and 654. 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 653 and 654. 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 653 and 654, 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 653 and 654.

Drug and Alcohol Testing

Option 2

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). 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 Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). 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 [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR © submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

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 \$100,000).

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.

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.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)© and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

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

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

Certificate of Compliance with 49 U.S.C. 5323(j)(2)©.

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)© and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)©

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)©, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the 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 49 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.

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.

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

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 subagreements 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.

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.

8. BUS TESTING

49 U.S.C. 5323©

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© 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© 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 CFR 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 CFR 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 CFR 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. A 5323(l) and FTA's implementing regulation at 49 CFR 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 \$100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)©, Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 CFR 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)© 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 CFR 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

10. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts

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

Flow Down

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

Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

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. A 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 A 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, 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. A 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. A 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. A 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, 18 CFR 18.36, 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 49 C. F. R. 18.36(l), 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 CFR 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 \$100,000.
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, an hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
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 49 CFR 18.39(i)(11).

12. FEDERAL CHANGES

49 CFR Part 18

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 Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

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 to 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 (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described hereunder.

(b) Rights Reserved

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

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

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) 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 (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) 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 (Recipient) 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 (Recipient) 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 (Recipient's) interest.

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

1. (Recipient) 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 (Recipient), 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 (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) 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 (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

© A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient'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 (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

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 (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

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

14. CLEAN AIR

42 U.S.C. 7401 et seq.

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts

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

Flow Down

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. AA 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 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.

16. Davis-Bacon Act

40 U.S.C A 276a -276a-5 (1995)

29 CFR A 5 (1995)

Contract Applicability

Construction contracts over \$2,000.00

Flow Down

Applies to third party contractors and subcontractors

Model Clause

(The language in this clause is mandated under the DOL regulations at 29 CFR A 5.5.)

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

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

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

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

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

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

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

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

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

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or © 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 [**insert name of grantee**] 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 [**insert name of grantee**] 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 [insert name of grantee] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

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

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

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

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

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

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

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

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

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

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

40 U.S.C. AA 327 -333 (1995)

29 CFR A 5 (1995)

29 CFR A 1926 (1995)

Contract Applicability

Section 102 of the Act, which deals with overtime requirements, applies to:

- all construction contracts in excess of \$2,000 and;
- all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) in excess of \$2,500.

(The dollar threshold for this requirement is contained in the current regulation 29 CFR A 5.15.)

Section 107 of the Act which deals with OSHA requirements applies to construction contracts in excess of \$2,000 only. The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

Flow Down

Applies to third party contractors and subcontractors.

Model Clauses

Pursuant to Section 102 (Overtime):

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

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

(2) **Violation; liability for unpaid wages; liquidated damages** . In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including

watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** . The (**write in the name of the grantee or recipient**) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and

Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

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

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

Section 107 (OSHA):

(This section is applicable to construction contracts only)

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

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

18. COPELAND ANTI-KICKBACK ACT

40 U.S.C. A 276c (1995)

29 CFR A 3 (1995)

29 CFR A 5 (1995)

Contract Applicability

All construction contracts in excess of \$2,000

Flow Down

Applicable to all third party contractors and subcontractors.

Model Clauses

3.1 of the Copeland Act makes it clear that the purpose of the Act is to assist in "the enforcement of the minimum wage provisions of the Davis- Bacon Act." In keeping with this intent DOL has included a section on the Copeland Act in the mandatory language of the Davis-Bacon provisions. The language can be found at A5.5(a)(5) of the Davis-Bacon model clauses and reads as follows:

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.

Since there are no specific statutory or regulatory requirements for additional mandatory language, I would recommend that no additional clauses are necessary for this provision.

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.

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. AA3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR 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. A5307, the Government reserves the right to impose the penalties of 18 U.S.C. A1001 and 49 U.S.C. A5307(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.

21. TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1C

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

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

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

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

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

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall

not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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

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

Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

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

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

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

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 (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of

the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is

terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

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

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

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1)

immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

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

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

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

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

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

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

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

49 CFR Part 29 Executive Order 12549

Applicability to Contracts

Executive Order 12549, as implemented by 49 CFR Part 29, prohibits FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. As part of their applications each year, recipients are required to submit a certification to the effect that they will not enter into contracts over \$100,000 with suspended or debarred contractors and that they will require their contractors (and their subcontractors) to make the same certification to them.

Flow Down

Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000. Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both contractors and subcontractors and contracts and subcontracts over \$100,000.

Mandatory Clause/Language

(Instructions) The certification and instruction language is contained at 29 CFR Part 29, Appendix B, and must be included in IFB's and RFP's [for inclusion by contractors in their bids or proposals] for all contracts over \$25,000 (RABA edit from \$100,000), regardless of the type of contract to be awarded.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Lower Tier Covered Transactions (Third Party Contracts over \$25,000 (RABA edit from \$100,000)).

Instructions for Certification

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below .
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, (Recipient) may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to (Recipient) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact (Recipient) for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by (Recipient).
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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

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

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

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

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

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. A 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.

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 49 CFR Part 19, Appendix A, 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. A 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C.

A 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. A 12132, and Federal transit law at 49 U.S.C. A 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. A 2000e, and Federal transit laws at 49 U.S.C. A 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 CFR 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. A 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. AA 623 and Federal transit law at 49 U.S.C. A 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

© Disabilities . In accordance with section 102 of the Americans with Disabilities Act, as amended, 42

U.S.C. A 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 CFR 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.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18 FTA Circular 4220.1C

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where 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.

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

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) 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 (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder 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 (Recipient), (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 hereunder, except as may be specifically agreed in writing.

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401

49 CFR Parts 18 and 19

Applicability to Contracts

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

Flow Down

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 49 CFR Part 19, Appendix A, Section 5, 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 49 CFR A 18.34 and 49 CFR A 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

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

2 . Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or

in part provided by FTA.

© 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 © , 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), ©, 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 CFR 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 - This 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 CFR 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.

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 CFR 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. A 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. A 5311. Alternate provisions for those projects are set forth in subsections (b) and © of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

A 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. A 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. A 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. A 5333(b), U.S. DOL guidelines at 29 CFR 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.

© Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

A 5311 in Non-urbanized Areas . If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. A 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(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.

28. Disadvantaged Business Enterprise (DBE) Provision

49 CFR Part 23

Applicability to Contracts

DBE provisions only apply to all DOT-assisted contracts.

Flow Down

These requirements only flow to FTA recipients who receive at least \$250,000 in FTA capital and operating funds, exclusive of funds for transit vehicle purchases [reference 49 CFR 23.67], or \$100,000 in FTA planning funds.

Model Clause/Language

No specific language is mandated, but FTA has included language developed by Southwest Ohio Regional Transit Authority (SORTA).

Disadvantaged Business Enterprise Provision. - 1. The Federal Fiscal Year goal has been set by (name of grantee) in an attempt to match projected procurements with available qualified disadvantaged businesses. (name of grantee) goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by (name of grantee) as set forth by the Department of Transportation Regulations 49 CFR Part 23, March 31, 1980, and amended by Section 106© of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

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

(a) Policy

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

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

It is further the policy of (name of grantee) to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of (name of grantee) procurement activities is encouraged.

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

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

(d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with (name of grantee) DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of (name of grantee) and will be submitted to (name of grantee) upon request.

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

* Identification of qualified DBE

* Available listing of Minority Assistance Agencies

* Holding bid conferences to emphasize requirements

2 DBE Program Definitions, as used in the contract:

(a) Disadvantaged business "means a small business concern":

i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. or

iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

(b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106©) Determinations of Business Size.

© "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

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

iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

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

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

29. State and Local Law Disclaimer

Applicability to Contracts

This disclaimer applies to all contracts.

Flow Down

The Disclaimer has unlimited flow down.

Model Clause/Language

FTA has developed the following language.

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

30. Incorporation of Federal Transit Administration (FTA) Terms

FTA Circular 4220.1C

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 4220.1C or as amended, dated May 1, 1995, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

APPENDIX C

FTA REQUIRED CERTIFICATIONS, REPORTS AND FORMS LIST

Require	Comments	Master Agreement Reference
Bus Testing Certification and Report	Procurements of buses and modified mass produced vans	15.1(4)
TVM Certifications	All rolling stock procurements	12.d(1)
Buy America Certification	Procurements of steel, iron or manufactured products exceeding \$100,000	14.a
Pre-Award Audit	Rolling stock procurements exceeding \$100,000	15.1(3)
Pre-Award Buy America Certification	Rolling stock procurements exceeding \$100,000	15.1(3)
Pre-Award Purchaser's Requirement	Rolling stock procurements exceeding \$100,000	15.1(3)
Post-Delivery Audit	Rolling stock procurements exceeding \$100,000	15.1(3)
Post-Delivery Buy America Certification	Rolling stock procurements exceeding \$100,000	15.1(3)
Post-Delivery Purchaser's Requirement	Rolling stock procurements exceeding \$100,000	15.1(3)
On-Site Inspector's Report	Rolling stock procurements for more than 10 vehicles	15.1(3)
Federal Motor Vehicles Safety Standards (Pre-Award and Post-Delivery)	Motor vehicle procurements	15.1(3)
Lobbying Certification	Procurements exceeding \$100,000	3.d(2)
Standard for LLL and Quarterly Updates	Procurements exceeding \$100,000 where contractor engages in lobbying activities	3.d(2)

APPENDIX D

FEDERAL CERTIFICATES

CERTIFICATION OF ELIGIBILITY

The _____ (Name of Contractor) hereby certifies that it is not included on the United States Comptroller General's Consolidated List of Persons or firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standard Provisions.

Signed

Title:

Date:

CERTIFICATION OF NON-COLLUSION

By submission of this proposal, each offeror and each person signing on behalf of any offeror certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

The contents of this proposal and of any subsequently submitted best and final offer have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any other matter relating to such proposal with any other offeror or with any competitor;

Unless otherwise required by law, the contents of this proposal and of any subsequently submitted best and final offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening, directly or indirectly, to any other offeror or to any competitor; and,

No attempt has been made or will be made by the offeror to induce any other person, partnership or corporation to submit or not to submit a proposal or a best and final offer for the purposes of restricting competition.

Offeror Date

Authorized Signature

Notary

Subscribed and sworn before me this _____ day of _____, 20____.

My commission expires _____, 20____.

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

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)©, Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 CFR 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)© 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 CFR 661.7:

Date: _____

Signature: _____

Company Name: _____

Title: _____

CARGO PREFERENCE-USE OF UNITED STATES FLAG VESSELS

Pursuant to 46 U.S.C 1241 46 CFR Part 381, 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.

Date: _____

Signature: _____

Company Name: _____

Title: _____

FLY AMERICA REQUIREMENTS

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. 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. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Signature

Print Name

Title

Dated

Attest

DISADVANTAGED BUSINESS ENTERPRISES CERTIFICATE

Special Provision for Transit Vehicle Manufacturers- As required by 49 CFR Part 23, as amended by Subpart D, Section 23.67FR 48, Thursday, July 21, 1983, effective October 1, 1983. Each offeror, as a condition of being authorized to propose is required to certify, during the Technical Proposal Submission Period, that the offeror has submitted the goals provided for in 49 CFR Part 23, Subpart D, Section 23.67 (b) to the FTA Administrator, and, the FTA Administrator has either approved them or not disapproved them. Failure to comply with this provision shall disqualify the offeror and any proposal submitted shall be rejected.

The offeror hereby certifies that it's proposal is in compliance with the above "DBE" provisions.

Signed:

Title:

Company:

Date:

CERTIFICATION REGARDING LOBBYING

49 CFR PART 20

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

- .. 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.

- .. 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.* .)]

- .. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients 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

DRUG-FREE WORKPLACE CERTIFICATION

Company/Organization Name

The contractor or grant recipient named above hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The above named contractor or grant recipient will:

Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a). Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b), to inform employees about all the following:

1. The dangers of drugs in the workplace,
2. The person's or organization's policy of maintaining a drug-free workplace,
3. Any available counseling, rehabilitation and employee assistance programs, and Penalties that may be imposed upon employees for drug violations.
4. Provide as required by Government Code Section 8355(c), that every employee who works on the proposed contract or grant:
5. Will receive a copy of the company's drug-free policy statement and
6. Will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.

CERTIFICATION

I, the official named below, hereby swear that I am duly authorized legally to bind the contractor or grant recipient to the above described certification. I am fully aware that this certification, executed on the date and in NCTPA below, is made under penalty of perjury under the laws of the State of California.

Official's Name

Date Executed and Executed in RABA of

Contract or Grant Recipient Signature

Title

Federal I.D. Number

CIVIL RIGHTS REQUIREMENTS

The following requirements apply to the underlying contract:

- A. Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal Transit Law at 49 U.S.C. 5332, 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, Contractor Inc. agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
- 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, 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 CFR 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 which 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. 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, Contractor agrees to comply with any implementing requirements FTA may issue.
 - Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 62§3 and Federal transit law at 49 U.S.C. 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
 - Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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.

Signature

Title

Date

Attest

**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 4220.1D](#) or as amended (also see [Change 1](#)), dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

Signature

Title

Date

Attest

LOCATION OF PARTS AND TECHNICAL SERVICES

Location of nearest Technical Service Representative to RABA.

Name:

Address:

City/State/Zip:

Telephone:

Location of nearest Engine and Transmission Warranty Service facility to RABA.

Name:

Address:

City/State/Zip:

Telephone:

Location of nearest Parts Distribution Center to RABA.

Name:

Address:

City/State/Zip:

Telephone:

Delivery of Parts and Components to be purchased for Service and Maintenance.

Regular Method of Shipment: _____

FAIR EMPLOYMENT PRACTICES CERTIFICATE

The undersigned, in submitting a bid for performing the following work by contract, hereby certifies that the bidder will meet the above standards of affirmative compliance with the Fair Employment Practices Act.

(Type) **Products and Services**

(Type) **Bidding Company**

By

Signature

(Type) **Name of signer**

(Type) **Title**

Address

Number and Street

City/State/Zip Code

Telephone

APPENDIX E

DETERMINATION OF PRICE REASONABLENESS

REDDING AREA BUS AUTHORITY (RABA)

Determination of Fair and Reasonable Price

Vendor _____

Item/Purchase _____

I hereby determine the price paid for this/these item(s) to be fair and reasonable based on at least one of the following:

_____ *Found reasonable on recent purchase*

_____ *Obtained from current price list*

_____ *Obtained from current catalog*

_____ *Similar item in related industry*

_____ *Personal Knowledge of item procured*

_____ *Regulate rate (utility)*

_____ *Commercial market sales price from advertisements*

_____ *Other* _____

Signed _____

Date _____

APPENDIX F

PROCUREMENT DOCUMENTATION CHECKLISTS (for use with FTA supported contracts)

Contract File # _____ Project Manager _____

Total Procurement Amount \$ _____ Contractor/Vendor _____

Funding: Federal: _____ % FTA Grant Number _____

Local: _____ % Source(s) _____

Type of Procurement (check method):

- Small Purchase (Determination of Fair and Reasonable Price)
- Small Purchase Blanket Purchase Order
- RFP
- IFB
- RFQ (A/E)
- RFQ (non A/E)
- Sole Source
- Emergency Procurement

File Contents

	Item	Yes/No
1.	Request to Purchase	
2.	Fair and Reasonable Price Determination	
3.	Cost/Price Analysis	
4.	Quotations	
5.	Rationale for type of procurement process	
6.	RFP	
7.	RFQ	
8.	IFB	
9.	Sole Source Documentation	
10.	List of all vendors responding to the procurement	
11.	Vendor list and copy of notice (if required)	
12.	Responses to RFP/RFQ/IFB	
13.	Addenda Receipt Form	
14.	Selection Criteria, Rating Forms, Committee Membership	

15. **All documentation relating to the selection process, including, but not limited to: Evaluation score sheets, bids, rationale for selection and/or rejection of respondents, the basis for the contract price and the source selection plan**
 16. **Notice of Award**
 17. **Notice of Non-award**
 18. **Notice to Proceed (if used)**
 19. **Board Report**
 20. **Pre-award audit/review**
 21. **Required Pre-award certifications**
 22. **Rationale for selection of contract type**
 23. **Executed Contract, complete with federal clauses, exhibits, resolutions**
 24. **Contractor Insurance**
 25. **Any amendments to the agreement**
 26. **Bond documents**
-

APPENDIX G

REDDING AREA BUS AUTHORITY
REQUEST TO PURCHASE

PURCHASEORDER#:

Executive Director:

Procurement Officer:

Submitted by Project Manager:

SHIP TO:

SUGGESTED VENDOR:

ESTIMATED COST: _____ REQ # _____ DATE: _____

VENDOR #: _____ DELIVERY DATE: _____

FUND: _____ DEPT: _____ ACCOUNT CODE: _____

PROJECT Costing:

Business Unit: Project: Activity:

Resource Category: Resource Subcategory:

QUANTITY	UNIT	DESCRIPTION	UNIT COST	EXTENSION
		Tax		
		Shipping		
		Total		

RECEIVED BY _____
DATE _____

Bid Checklist Form

	<u>YES</u>	<u>NO</u>
1. Price is firm, fixed and definite	_____	_____
2. Bid is responsive to requirements of the solicitation	_____	_____
3. Exceptions taken to any material term or condition of the solicitation	_____	_____
4. Bid is ambiguous	_____	_____
5. All amendments to solicitation acknowledged	_____	_____
6. Bid signed	_____	_____
7. All material representations, bonds, guarantees and certifications completed	_____	_____
8. All required information submitted.	_____	_____
9. Bid is not defective	_____	_____

Bid Cost Factors Form

Solicitation / Bid No: _____

Supplier Price Evaluation Factors:

1. Purchase price: \$ _____

2. Payment discount terms: _____

3. Transportation costs: _____

4. Warranty: _____

5. Installation: _____

6. Training: _____

7. Technical assistance: _____

Total bid: _____

Evaluation: \$ _____

**NONCOMPETITIVE PROCUREMENT
JUSTIFICATION FORM**

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

Check one:

- The item is available only from a single source (sole source justification is attached).

- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).

- FTA authorizes noncompetitive negotiations (letter of authorization is attached).

- After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).

- The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(l) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

Comments:

Cost Analysis is attached.

Project Manager

Procurement Officer

Date

Date

Cost and Price Analysis Form

Comparisons with other competitive proposals: _____

Price quoted by vendor: _____

Competitive prices obtained from other vendors: _____

(state name of vendor and price)

Previous Contracts: _____

Date of Contract: _____

Purchase Price: _____

Catalog/Market Prices: _____

Source: _____

Purchase Price: _____

Historical Prices: _____

Date: _____

Purchase Price: _____

Independent Cost Estimates: _____

Source: _____

Date: _____

Purchase Price: _____

Price/Performance Ratio (if applicable): _____

Market Data: _____

Source: _____

Date: _____

Sole Source Cost Analysis Form

Prior to proceeding with sole source procurements, including contract modifications, RABA must perform a cost analysis in order to demonstrate the proposed price is fair and reasonable. The cost analysis should examine the elements of cost (labor hours, material, overhead, and profit) for professional consulting and architectural and engineering type contracts.

Please note: It is not sufficient to list the last price paid and the percentage change of the newly quoted price. Actual analysis of the figures should be evident to explain why any increase or decrease in quoted costs is reasonable. All of the following elements must be completed for each proposed sole source procurement.

1. Verification of cost or pricing data and evaluation of cost elements:

2. Comparison of cost proposed with independent or previous cost estimate, market indices, and other factors:

3. Evaluation of suppliers' costs first hand and assessment for completeness and reasonableness, including evidence and rationale for determination.

Award Recommendation and Justification Form

Department: _____

Procurement Number: _____
(RFP/BID #)

Subject: _____

Report Date: _____	Number Bids/ RFP'S Mailed: _____	Number of Bids/ RFP'S Received: _____
-----------------------	-------------------------------------	--

Recommendation:

Justification:

Approvals:

Project Manager Procurement Officer

