

PROCUREMENT POLICIES
FOR
THE FORT WAYNE PUBLIC
TRANSPORTATION CORPORATION



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1. INTRODUCTION

The purpose of this procurement manual is to define the basic policies and procedures that govern the procurement, accounting, and disposal of Fort Wayne Public Transportation Corporation a/k/a Citilink's ("FWPTC") facilities, rolling stock, materials, and equipment. It also governs the procurement and accounting of professional and other services that may be required by FWPTC if they will be paid for with federal funds. This manual does not cover the procurement and/or disposal of real estate, except to provide that such activities shall be conducted in accordance with applicable state and federal statutes and regulations under the direction of the FWPTC Board of Directors and Legal Counsel. This manual specifies policy for all FWPTC personnel involved in the procurement process.

The ultimate authority and responsibility for the purchase and sale of all personal property and services rests with the Board of Directors. The Board of Directors has herein delegated some of that authority and responsibility to the General Manager and other employees of FWPTC.

1.1 GENERAL PROCUREMENT POLICY

FWPTC will abide by applicable federal, state, and local guidelines which govern procurements. For procurements in which federal funds are used, federal regulations will take precedence, in many instances, over state and local guidelines. The Federal Transit Administration ("FTA") provides guidance relating to procurement matters in FTA C4220.1F, FTA C5010.1D, FTA C4715.1A and 49 CFR Part 18. Each of these federal circulars and regulations provide guidance for the procurement function of transit agencies. The State of Indiana provides guidance relating to procurement matters in I.C. 36-1-11, 36-1-12 and 5-22-1 *et seq.*

1.2 CHANGE, REVIEW, AND UPDATE

Only the Board of Directors can revise this manual, or parts thereof. FWPTC shall review this manual at the end of each fiscal year, or sooner, as changes in regulations and circumstances require, by the General Manager, Controller, and Legal Counsel. If any changes are required, they will be submitted to the Board of Directors for approval.

1.3 SPECIAL REQUIREMENTS

1.3.1 Buy America

All FWPTC procurements meeting threshold requirements are subject to the Buy America provisions of 49 U.S.C. 5232(j) and 49 CFR Part 661.

Pursuant to 49 CFR Part 661.6 or 49 C.F.R. Part 661.12, a Buy America Certificate must be completed and submitted with each responsive proposal/bid. A proposal/bid which does not include the certificate will be considered non-responsive.

Per FTA's "Buy America" requirements, federal funds may not be obligated unless steel, iron and manufactured products used in FTA funded projects are produced in the United States, unless FTA has granted a waiver or the product is subject to a general waiver. Rolling stock must have sixty percent (60%) domestic content and final assembly must take place in the United States.

A waiver from the Buy America requirements may be sought by FWPTC if grounds for the waiver exist under 49 CFR Part 661.7.

1.3.2 Disadvantaged Business Enterprise (DBE)

FWPTC's procurement process is structured to comply with 49 U.S.C. § 5332, Section 105(f) of the Surface Transportation Assistance Act of 1982, Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 and DOT implementing regulations at 49 CFR Part 26. As such, FWPTC will take all necessary affirmative steps to assure that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26.5 ("DBEs"), are used when possible, including the following:

- (1) Placing qualified DBEs on solicitation lists;
- (2) Assuring that DBEs are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs;
- (4) Establishing delivery schedules, where the requirement permits, that encourage participation by DBEs;
- (5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the five (5) affirmative steps listed above.

FWPTC participates in the Indiana Unified Certification Program (UCP) and is a signatory to same. Annually, FWPTC projects the number and types of contracts to be awarded and the number and types of DBEs likely to be available to compete for contracts. DBE contractors are encouraged to compete as prime contractors. FWPTC is committed to undertaking special efforts to seek goods and services provided by DBEs. DBE goals are established annually for FWPTC annual procurements with contracting opportunities, as well as on a project-to-project basis.

The General Manager shall appoint a DBE Officer, who reports directly to the General Manager on all matters concerning the DBE program. The DBE Officer shall maintain an "open door" policy and is primarily responsible for the enforcement of the DBE Program. The DBE Officer is integrally involved in the day-to-day procurement process.

1.3.3 Equal Employment Opportunity/Title VI

FWPTC's procurement process shall carry out the provisions of the equal employment opportunity requirements of 49 U.S.C. § 5332, Title VI regulations issued by the U. S. Department of Justice (DOJ) (28 CFR Part 42 *et seq.*) and the U. S. Department of Transportation (DOT) (49 CFR Part 26). FWPTC and any contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of any contract. This shall insure that no person shall on the grounds of race, color, creed, national origin, sex, or age be excluded from participation in, or denied the benefits of, or be subject to discrimination under any project, program, or activity. This shall apply to employment and business opportunities.

1.3.4 Debarment and Suspension

FWPTC shall not knowingly participate in any contractual relationship with a contractor that is currently debarred by the Federal Government. The General Services Administration maintains a current consolidated list of all contractors debarred, suspended, proposed for debarment, or declared ineligible by Government agencies or by the General Accounting Office. Information concerning the Excluded Party List System can be found on its website (<https://www.epls.gov/>). All bidders will be required to certify they are not on the consolidated list of ineligible contractors in accordance with 2 CFR Part 180. In addition to the bidder certification, the contracting officer shall check the Excluded Parties List System (EPLS) before awarding a third party contract. This procedure will include printing the screen with the results of the search to include in the procurement file.

In order to protect the public's interest, FWPTC may have occasion to initiate its own debarment and suspension actions. As it relates to FWPTC's activities, "debarment" is defined as an action initiated by the Contracting Officer intended to exclude an organization from contracting or subcontracting for a reasonable period of time. A contractor may be debarred for several causes including:

- (1) A conviction or a civil judgment entered for the commission of fraud;
- (2) The commission of a criminal offense which involves obtaining, attempting to obtain, or performing a public contract or subcontract;
- (3) Violation of Federal or State antitrust statutes related to the submission of offers;
- (4) Conviction of criminal offenses such as embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (5) Violation of the ethics provisions of this Procurement Policy; and
- (6) Instances demonstrating the lack of business integrity or business honesty that directly affect the responsibility of a contractor or subcontractor.

FWPTC will initiate debarment proceedings only in instances of actions on the part of the contractor that satisfy one or more of the causes of debarment set forth above. The Contracting Officer shall be responsible for implementing the due process procedures for debarment and suspension actions. FWPTC will not participate in de facto debarment of contractors. De facto debarment involves the exclusion of potential bidders based upon non-performance on specific prior contracts without allowing them to bid and making a formal non-responsibility determination. FWPTC will allow affected persons due process prior to taking any debarment action.

When a debarment proceeding is initiated, the Contracting Officer (or other designated representative of FWPTC) shall advise the contractor of the following, if applicable:

- (1) That debarment is being considered;
- (2) The reasons for the proposed debarment;
- (3) The conduct or transaction(s) upon which the action is based;
- (4) The cause(s) relied upon for proposing the debarment;
- (5) The potential effect of a debarment;
- (6) The date, time and place where the Contracting Officer (or other designated representative of FWPTC) will hear and receive all evidence concerning the proposed debarment;
- (7) The debarring official's decision;
- (8) Available settlement and voluntary exclusion procedures, if any;
- (9) The period of debarment; and
- (10) The scope of debarment.

1.3.5 Life Cycle Costing

Life cycle costing is the measure of the total cost of a product over its service life, including maintenance costs, incidental costs for tools or installation, and its expected useful life span.

FWPTC reserves the right to apply life cycle costing to purchases in the formal bidding process, and bidders may be required to provide information, as may be necessary, to perform such analyses.

1.3.6 inventory and Audit

1.3.6.1 Real Property and Equipment

The General Manager and the Department Supervisors shall maintain an on-going inventory of all real property and equipment. Real property and equipment records must include a description, identification number, source, acquisition date, cost, percentage of Federal participation in the cost, the grant project under which it was procured, location, use and condition, disposition action, vested title and useful life.

A physical inventory of equipment must be taken and the results reconciled with equipment records at least once every two (2) years. Any differences must be investigated to determine the cause of the difference. In connection with this inventory, FWPTC shall certify the existence, current use, and continued need for the equipment. The requirement for this certification continues throughout the useful life or until disposition of project equipment. The certification must be based on an adequate equipment management record system and state for each grant project that:

- (1) Equipment acquired under the grant will continue to be used for the purpose for which the grant was approved;
- (2) The equipment does not exceed the needs of FWPTC's transit operations;
- (3) None of the equipment has been sold, damaged, lost or otherwise taken out of transit service; and
- (4) A physical inventory and verification have been taken at least once during the preceding two (2) year period.

If any of these assurances cannot be made, the Department Supervisor shall submit a statement that addresses relevant information such as date, items involved, nature of the loss and the original grant number under which it was procured. Only the latest biennial inventory will be kept on file. The report will be submitted to the General Manager.

1.3.6.2 Parts

The Maintenance Supervisor will conduct an annual physical inventory of parts and reconcile the parts-in-stock versus those on hand. A variance report will be prepared by the Maintenance Supervisor and submitted to the General Manager and Controller identifying discrepancies in the count of line items and their value.

1.3.7 Scrap and Surplus

The identification of surplus and scrap equipment and parts shall be the responsibility of the Department Supervisor. Equipment shall be considered "surplus" equipment when it becomes obsolete to FWPTC because it either has been replaced by more cost-efficient equipment or because the equipment no longer supports the mission of FWPTC. Equipment shall be considered "scrapped" equipment when it is non-functional and non-repairable or after it becomes obsolete to FWPTC. Parts shall be considered "surplus" parts when stock-on-hand exceeds the maximum as established pursuant to demand history .

FWPTC's history is to dispose of surplus and scrap parts and/or equipment in the most effective manner available and in conformity with FTA C5010.1D, FTA C9030.1C, FTA C4220.1F and State Statute I.C. 36-1-11. Disposal of all surplus parts and/or equipment must be authorized by the General Manager, except that disposal of surplus parts and equipment individually valued in excess of Five Thousand Dollars (\$5,000.00) and disposal of all vehicles must be approved by the Board of Directors. Surplus parts and/or equipment will be disposed of by using one of the following methods:

- (1) Return to supplier for credit or refund;
- (2) Transfer with another government entity, (I.C. 36-1-11-8);
- (3) Replace/trade in with new parts and/or equipment; and
- (4) Sale of Surplus.

If the surplus part(s) and/or equipment to be sold are:

- (1) one (1) item, with an estimated value of One Thousand Dollars (\$1,000.00) or more; or
- (2) more than one (1) item, with an estimated total value of Five Thousand Dollars (\$5,000.00) or more,

then FWPTC may sell the personal property at a public auction conducted by an auctioneer licensed under Ind. Code § 25-6.1, after advertising the personal property for sale as provided below. However, if FWPTC does not engage an auctioneer, then the disposing agent shall sell the property at a public sale or by sealed bids delivered to the office of the General Manager before the date of sale. All sales shall be made to the highest responsible and responsive bidder. FWPTC shall expressly reserve the right to reject any and all bids it receives. Advertisement of all sales shall be published in the Fort Wayne Newspapers two (2) times, at least one (1) week apart, with the second publication being ten (10) days before the sale, or the date for opening sealed bids (Ind. Code § 5-3-1-2(e)).

If the surplus part(s) and/or equipment to be sold are

- (1) one (1) item, with an estimated value less than One Thousand Dollars (\$1,000.00); or
- (2) more than one (1) item, with an estimated total value less than Five Thousand Dollars (\$5,000.00),

then FWPTC may sell the property at a public or private sale or transfer the property without advertising.

All surplus parts and/or equipment shall be appraised to determine such fair market value(s) prior to selling or trading on new parts and/or equipment.

Scrap part(s) and/or equipment will be disposed of by using one of the following methods:

- (1) Scrap parts and/or equipment that have been collected in conjunction with a recycling program may be sold without advertising at a public or private sale; or
- (2) scrap parts and/or equipment that is/are worthless may be demolished or junked.

1.3.8 Pre-Award and Post-Delivery Audits of Rolling Stock Purchases

On September 24, 1991, the FTA issued regulations (49 CFR Part 663) that affect the purchase of federally-funded vehicles. FWPTC is required to assure that Federal Motor Vehicle Safety Standards (FMVSS), "Buy America" requirements, and their own bid specifications are met prior to awarding a contract and after delivery of vehicle(s) for all vehicle purchases.

1.4 ETHICS

1.4.1 Relationships

No FWPTC employee, officer, agent, Legal Counsel, member of evaluation committees for FWPTC-funded projects or member of the Board of Directors shall participate in the selection, award or administration of a contract, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, member of the Board of Directors or agent of FWPTC, including any member of his/her immediate family, partner

or an organization that employs, or is about to employ, any of the above, has a financial interest or other interest in the firm selected for the award.

1.4.2 Gifts and Entertainment

All FWPTC employees, officers, agents, Legal Counsel, members of evaluation committees for FWPTC-funded projects and members of the Board of Directors are strongly discouraged from accepting all gifts and entertainment from any party having or seeking to establish a business relationship with FWPTC. Even when gifts and entertainment are exchanged out of the finest motives of personal friendship they can be misunderstood. They can appear to be an attempt to bribe individuals into directing FWPTC's business to a particular supplier. To avoid both the reality and the appearance of improper relations with suppliers, potential suppliers or customers, each employee, Legal Counsel, member of evaluation committees for FWPTC-funded projects and member of the Board of Directors is prohibited from soliciting or receiving gifts, gratuities or any other personal benefit or favor from suppliers, potential suppliers or customers. Employees, Legal Counsel, members of evaluation committees for FWPTC-funded projects and members of the Board of Directors may, however, accept gifts of nominal value or advertising and promotional materials clearly marked with company or brand names. Entertainment should not be solicited, but may be accepted if it occurs infrequently, arises out of the ordinary course of business, involves reasonable, not lavish, expenditures, and takes place in settings that are reasonably appropriate and fitting to the employees, their hosts, and the business at hand.

1.4.3 Influence (I.C. 35-44-1-3)

All FWPTC employees, officers, agents, Legal Counsel, members of evaluation committees for FWPTC-funded projects and members of the Board of Directors, are prohibited from having a pecuniary interest in, or deriving a profit from, a contract, purchase or procurement entered into by FWPTC. This does not prohibit those individuals from receiving compensation for services they provide FWPTC as employee, Legal Counsel, member of evaluation committee or member of the Board of Directors. Nor does it prohibit those individuals from receiving compensation for expenses they incur in carrying out their work with FWPTC. Nor does it prohibit FWPTC employees, officers, agents, members of the Board of Directors, and Legal Counsel from having a pecuniary interest in a contract or purchase connected with FWPTC if their functions and duties with FWPTC are unrelated to the contract or purchase and they make a disclosure in accordance with the following:

- (1) The disclosure shall be in writing;
- (2) It shall describe the contract or purchase to be made by the governmental entity;
- (3) It shall describe the pecuniary interest that the public servant has in the contract or purchase;
- (4) It shall be affirmed under penalty of perjury;
- (5) It shall be submitted to FWPTC and be accepted by the Board of Directors in a public meeting of the governmental entity prior to final action on the contract or purchase;
- (6) It shall be filed within fifteen (15) days after final action on the contract or purchase with the Clerk of the Allen County Circuit Court and the State Board of Accounts of Indiana; and
- (7) If the public servant is appointed, it shall contain the written approval of the Board of Directors.

A FWPTC employee, officer, agent, Legal Counsel, member of evaluation committees for FWPTC-funded projects or member of the Board of Directors, shall be considered to have a pecuniary interest, as defined in Ind. Code § 35-44-1-3(g), in a contract or purchase if it will result or is intended to result in an ascertainable increase in the income or net worth of the individual associated with FWPTC or any of his/her dependents.

Pursuant to Ind. Code § 35-44-1-3(k), a "dependent" means any of the following:

- (1) Spouse;

(2) A child, stepchild, or adopted child that is unemancipated and less than eighteen (18) years of age; and

(3) Any individual who has more than one half (½) of his/her support provided during a year by the individual associated with FWPTC.

1.4.4 Guidelines to Management Services Contractor

To avoid conflict, whether real or apparent, the following shall apply to employees of any management services contractor (Contract Management):

(1) No Contract Management personnel or support staff shall make recommendations or be involved in the preparation of specifications for any contracts for which that Management Contractor may bid or propose, except as approved by the Board of Directors; and

(2) No Contract Management personnel or support staff shall be involved in any aspect of the evaluation, selection, or award of a contract for which that Management Contractor may bid, except as approved by the Board of Directors.

1.4.5 Violations

Administrative Employees shall be subject to disciplinary action under the personnel policy manual for administrative employees for violation of the provisions of this Procurement Policy. Violation of the provisions of this Procurement Policy by contractors, vendors and bidders, potential vendors, contractors and bidders, Contract Management, or their respective agents, shall be considered a breach of FWPTC's contract, and shall be considered a willful breach if such violation is deemed to be in knowing or careless disregard of the provisions of this Procurement Policy, and shall subject the contractors or their agents to disciplinary action up to and including suspension or debarment from contracting with FWPTC.

1.4.6 Familiarization

It shall be the responsibility of every officer, employee, agent, and contractor of FWPTC to familiarize himself or herself with the provisions of this Procurement Policy. All inquiries concerning the same should be directed to the General Manager.

1.5 VENDOR RELATIONS

FWPTC operates with integrity and fairness to its suppliers and maintains an "open door" policy to all companies and individuals in the discussion of products or services. It shall make every effort to maintain a good business relationship with all vendors/bidders and potential vendors/bidders with whom it does business. Through these principles, FWPTC intends to create an atmosphere in which FWPTC, vendors, and individuals can work together for the provision of goods and services to FWPTC at a fair and reasonable price. In furtherance thereof, FWPTC shall:

- (1) Establish and maintain ethical purchasing policies and principles;
- (2) Maintain open and fair competition;
- (3) Maintain fair and clear purchase and bid specifications;
- (4) Observe and maintain honesty and candor in all transactions with vendors;
- (5) Respect the confidence of vendors in the handling of information;
- (6) Remain free from any obligation to vendors;

- (7) Answer all inquiries promptly;
- (8) See that all sales representatives receive a full, fair, and courteous hearing, as set forth below, upon request;
- (9) Furnish complete and accurate information;
- (11) Expedite delivery of materials and promote payment of invoices;
- (12) Keep an open mind to new methods and procedures;
- (13) Encourage testing or demonstration of materials and products which may be of value to FWPTC; and
- (14) Visit sources of supply and keep informed as to their methods and stability.

At various times, FWPTC may request assistance from vendors requiring the expenditure of time and effort on the part of vendors. This in no way commits FWPTC to a purchase from a vendor serving in this way, nor does it obligate FWPTC to reimburse any expense incurred by the vendor in assisting FWPTC.

1.6 RIGHT TO REJECT PROPOSALS

FWPTC reserves the right to reject all bids or proposals submitted in response to an invitation for bids or request for proposals and to re-solicit the same or cancel the procurement when it is in FWPTC's best interest.

1.7 STATE OF INDIANA QUANTITY PURCHASE AWARD (QPA) PROGRAM

Where feasible, FWPTC shall make use of the Quantity Purchase Award (QPA) program of the State of Indiana Department of Administration for purchases.

2. PROCUREMENT METHODS

All procurements made in whole or part with Federal Funds (except micro purchases which are exempt) require the successful vendor to certify by execution of certain Federal Clauses; as detailed in Section 6 Appendix – Federal Clauses (6.2) that they will comply with all pertinent Federal Regulations and Federal Law.

Prior to award each successful vendor will be required to certify their compliance with the appropriate Federal clauses as detailed in Section 6 Appendix – Federal Clauses (6.2).

All procurements made in whole or part with Federal funds (except micro purchases which are exempt) require before award a search of the System for Award Management (SAM) to ensure that the apparent successful bidder in a procurement is not suspended or disbarred. The printed results shall become part of the permanent procurement file. No award shall be made to any firm which is suspended and/or disbarred. <https://www.sam.gov/portal/SAM/##11>

All procurements for rolling stock shall require the competition by Citilink staff of Buy America Pre-Award and Post Delivery Buy America Audits utilizing the forms included in Section 6 Appendix – Federal Clauses (6.5) regardless of source (to include purchases based on options from other agencies and cooperative purchasing agreements as allowed by Federal Law/regulation). Completed audit records shall become part of the permanent procurement files for the purchase and must be successfully completed prior to finalization of any purchase.

The following methods of procurement may be used, as appropriate. The General Manager will work with Department Supervisors to determine the most appropriate method of procurement, including:

- (1) Petty cash;
- (2) Small purchases;

- (3) Invitations for Bids (“IFBs”);
- (4) Request for Proposals (“RFPs”);
- (5) Non-competitive procurements (sole source);
- (6) Direct pay items;
- (7) Emergency procurements; and
- (8) Contract options.

2.1 PETTY CASH

Petty cash may be used for purchases up to Fifty Dollars (\$50.00) with the approval of the General Manager or Controller. Purchases up to One Hundred Dollars (\$100.00) may be made with petty cash if the appropriate documentation setting forth the reason for not using other methods of procurement is first offered and reviewed by

the General Manager or the Controller All petty cash disbursements shall be made by the Controller's office. Petty cash procedures will not be used to circumvent established policies or procedures.

2.2 SMALL PURCHASE (FTA C4220.1F and IC 5-22-8)

A small purchase is a relatively simple and informal procurement for securing services, supplies, or other property that do not cost more than One Hundred Thousand Dollars (\$100,000.00) in the aggregate. Small purchases are exempt from the FTA's Buy America requirements, but Davis-Bacon prevailing wage requirements apply to construction contracts exceeding \$2,000.00.

Competition will be encouraged by the following guidelines:

Purchase of less than Three Thousand Dollars (\$3,000.00): FWPTC shall make such purchases on a determination that the price is fair and reasonable, which determination shall be documented by obtaining at least one (1) quote from an establishment open to the general public and offering prices to FWPTC at or below that being offered to the general public (e.g., parts store, stationary store, discount store, printers, etc.), and FWPTC should, when possible, distribute such purchases equitably among qualified suppliers;

Purchase of Three Thousand (\$3,000.00), but less than Seven Thousand Five Hundred (\$7,500.00): Three (3) or more quotations shall be obtained from a price book, by telephone, by fax, e-mail, or in writing; and

Purchase of Seven Thousand Five Hundred Dollars (\$7,500.00), but less than One Hundred Thousand Dollars (\$100,000.00): FWPTC shall mail a written invitation to quote to at least three (3) persons known to deal in the lines or classes of materials to be purchased no later than at least seven (7) days before the time fixed for receiving quotes. Unless it elects to reject all quotes received, FWPTC shall award the contract to the lowest responsible and responsive person. If no offers are received from a responsible and responsive person and if all applicable Indiana and Federal laws, rules, and regulations are satisfied, then FWPTC may make the purchase without further invitations for quotes.

In any procurement, there must be a requisition approved prior to the generation of a purchase order and contract award. FWPTC shall not divide or reduce the size of a procurement so as to constitute a small purchase.

FWPTC is not required to utilize small purchase procurement or to treat all such purchases described above as small purchases. Any small purchase may, at the discretion of the Board of Directors or General Manager, be made by invitation for written quotes, as described above, by Invitation for Bid (IFB) or Request for Proposal (RFP), or by any other means acceptable under Indiana and Federal laws, rules, and regulations.

2.3 INVITATION FOR BIDS

FWPTC shall issue an IFB in the limited circumstances where it is appropriate, based on the factors listed below, to award a firm-fixed contract (lump sum or unit price). IFBs will be used when:

- (1) A complete, adequate, and realistic specification or description is available;
- (2) Two or more responsible bidders are willing and able to compete effectively for the business; and,
- (3) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If IFBs are used, the following requirements apply:

- (1) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, not to be less than (2) two, providing each with sufficient time to respond prior to the date set for opening the bids;

(3) The IFB, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;

(3) All bids will be publicly opened at the time and place prescribed in the IFB;

(4) A fixed-price contract (lump sum or unit price) award will be made in writing to the lowest responsive and responsible bidder. Where specified in the responsive bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discount will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of;

(5) The terms and conditions contained in an invitation for bid may not be waived after award; and

(6) IFBs will be reviewed by Legal Counsel when requested by the Board of Directors or General Manager.

2.4 REQUEST FOR PROPOSALS (RFP)

FWPTC shall issue a RFP in the limited circumstances where it is appropriate, based on the factors listed below, to award a fixed fee or cost reimbursement-type contract. Following formal advertisements, a fixed fee or cost reimbursement-type contract is awarded to the responsible and responsive proposer whose proposal is most advantageous to FWPTC, with price and other factors considered. If this method is used, the following requirements apply:

(1) RFPs will be publicized and will identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(2) Proposals will be solicited from an adequate number of qualified sources;

(3) Written procedures will be prepared for conducting technical evaluation of the proposals received and for selecting awardees. If so stated in the RFP, selection may be made on the basis of original proposals, without negotiation with any offeror. If negotiations are conducted, FWPTC shall negotiate with all offerors in the competitive range, i.e., all offerors that FWPTC determines have a reasonable chance of being selected for award based on cost or price and other factors that were stated in the solicitation; and

(4) Awards will be made to the responsible firm whose proposal is most advantageous to FWPTC's program with price and other factors considered. Due to the nature of the procurement, the contract award need not be based exclusively on price or price-related factors and can be awarded to an entity other than the lowest bidder.

FWPTC shall use competitive proposal procedures for qualifications-based procurement of architectural and engineering services based on the Brooks Act defined in 40 U.S.C. Sec. 1101 et seq. FWPTC shall also use qualifications-based procurements for architectural and engineering 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. FWPTC may not consider price as an evaluation factor in determining the most qualified offeror. Negotiation is conducted with only the most qualified offeror. A summary of negotiations must be prepared and placed in the contract file. There must also be included in the file a full cost analysis of the services to be performed. This method, where price cannot be used as an evaluation factor and negotiations are conducted with only the most qualified offeror, can only be used in procurement of the architectural and engineering services. This method of procurement cannot be used to obtain other types of services, even though a firm that provides the above types of services is also a potential source to perform other services.

If federal funds are to be used to pay for such services, FWPTC shall use Request for Proposals to employ legal and/or accounting services. Contracts for these services shall not exceed five (5) years in duration and shall be subject to annual approval of sufficient appropriations to cover the contract.

2.5 NON-COMPETITIVE PROCUREMENT (SOLE SOURCE)

Non-competitive procurement is accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate. A contract amendment or change order that is not within the scope of the original contract is a non-competitive negotiation that must comply with this subparagraph. Procurement by non-competitive negotiation may be used only when the award of a contract is infeasible under small purchase procedures, IFBs or RFPs and at least one of the following circumstances applies:

- (1) The item is available from only a single source;
- (2) When applicable law authorizes non-competitive negotiations; or
- (3) After solicitation of a number of sources, competition is determined inadequate.

To award a contract based on a non-competitive procurement, FWPTC shall utilize cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

Non-competitive procurements in excess of One Hundred Thousand Dollars (\$100,000.00) must be submitted to the FTA in accordance with Circular 4220. 1F. Written justification for any non-competitive procurement shall be maintained in the contract file. Such justification shall include a market survey and the basis for determining the fair and reasonable price.

2.6 DIRECT PAY ITEMS

Certain expenses are routinely incurred without the issuance of purchasing documentation. These “direct pay” expenses typically include the following:

- (1) Periodic vendor payments, under established leases;
- (2) Licenses and permits;
- (3) Conference expenses;
- (4) Organizational and professional membership dues;
- (5) Refunds (returns of bid deposits, overpayments of bus passes, etc.);
- (6) Reimbursements of petty cash accounts and funds transfers;
- (7) Utilities and phone bills;
- (8) Employee reimbursements;
- (9) Investigative expenses;
- (10) Settlement of claims and litigations;
- (11) Postages; and
- (12) Subscriptions to magazines, newspaper, periodicals, or trade journals.

For some of these items, FWPTC will receive a bill or invoice and, for others, FWPTC bears the responsibility for meeting a scheduled payment without an invoice or reminder from the payee. Because the usual purchasing paperwork (i.e., purchase requisition, purchase order) is not present for approval and documentation of the types of items listed above, the General Manager shall authorize the payment of these items.

2.7 EMERGENCY PROCUREMENTS (IC 5-22-10-4)

2.7.1 Definition

An emergency is defined as a real and present threat to the life and welfare of the public or an employee, to FWPTC property or the interruption of transit service which can reasonably be expected to be alleviated by the procurement in question. Emergency procedures will not be used to circumvent established policies or procedures.

2.7.2 Procurements for Less Than \$25,000.00

If the General Manager determines there is an emergency and there is insufficient time to obtain the required quotes for small purchases, the procurements necessary to handle the emergency may be made without receiving quotes if made in the open market. Said declaration of emergency shall be noted in writing on the purchasing documents and signed by the General Manager. FWPTC shall maintain the contract records for a special purchase in a separate file. The contract file shall contain a written determination of the basis for: 1) the special purchase; and 2) the selection of the particular contractor.

2.7.3 Procurements of \$25,000.00 or More

If the Board of Directors determines there is an emergency and there is insufficient time to advertise in newspapers as required, necessary procurements to handle the emergency may be made without giving notice or receiving bids, if quotes are invited from two (2) or more persons known to deal in the materials or work required. Said declaration of emergency and the names of those persons invited to quote shall be placed in the minutes of the Board of Directors. Further, FWPTC shall maintain the contract records for a special purchase in a separate file. The contract file shall contain a written determination of the basis for: 1) the special purchase; and 2) the selection of the particular contractor.

2.7.4 Procurement of Public Works Project

The Board of Directors, upon a declaration of emergency, may contract for a public work project without advertising for bids if bids or quotes are invited from at least two (2) persons known to deal in the public work required to be done. The minutes of the Board of Directors must show the declaration of emergency and the names of the persons invited to bid. (Ind. Code § 32-1-12-9). As used in this sub-section, "public work" means the construction, reconstruction, alteration or renovation of a public building or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by a political subdivision under a lease containing an option to purchase.

2.8 CONTRACT OPTIONS

2.8.1 Definition

An option means a unilateral right in a contract by which, for a specified time, FWPTC: 1) may elect to purchase additional equipment, supplies, or services called for by the contract; or 2) may elect to extend the term of the contract.

2.8.2 Use of Options

The FWPTC may employ options in contracts. An option is a unilateral right in a contract by which, for a specified time, the FWPTC may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If the FWPTC chooses to use options, the following will apply:

(1) FWPTC shall evaluate the option quantities or periods contained in a contractor's bid as part of the original contract award. Otherwise, the exercise of such options shall be considered a sole source procurement. FWPTC need not evaluate bids or offers for any option quantities when it determines that evaluation would not be in its best interests.;

(2) FWPTC shall ensure that the terms and conditions of the option shall be in accordance with the terms and conditions of the option stated in the initial contract award; and

(3) An option will only be exercised if the FWPTC first determines that the option price is better than prices available in the market, or that the option is a more advantageous offer at the time the option is exercised.

2.8.3 Contracts

The contract shall limit option quantities for additional equipment and supplies to not more than one hundred fifty percent (150%) of the initial quantity of the same contract line item. The contract shall specify the price or the products or services for the specified option period. The total of the basic and option periods shall not exceed ten (10) years in the case of services and requirements contracts. Prior to issuing a solicitation, FWPTC must obtain FTA approval for the inclusion of an option provision in excess of the amounts or periods set forth in the above paragraphs. The request to FTA must explain the need for the option and why it is in the best interest of FWPTC and FTA.

2.8.4 Exercise of Options

FWPTC may exercise an option only after making a written determination, signed by the General Manager, and placed in the contract file, that the exercise of the options is advantageous towards fulfilling FWPTC's need, considering price and other factors. FWPTC, after considering price and other factors, shall make the determination on the basis of one of the following:

(1) A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option. If it is anticipated that the best price available is the option price or that this is the more advantageous offer, FWPTC shall not use this method of testing the market;

(2) An analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer; or

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer. FWPTC shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of contracts for such supplies or services.

The determination of other factors set forth above should take into account FWPTC's need for continuity of operations and potential costs of disrupting operations. Before exercising an option, FWPTC shall determine that such action is in accordance with the terms of the option, the requirements of this paragraph, and the provisions of FTA C4220.1F.

2.9 REIMBURSEMENT OF CERTAIN EXPENSES; CREDIT CARDS

At times, it is necessary for members of the Board of Directors, the General Manager and Department Supervisors to incur expenses for FWPTC-related travel. The Board of Directors may authorize the controller to pay a per diem

in advance to an employee or member of the Board of Directors who will attend a training session or other special business meeting required as a duty of the same (Ind. Code § 36-9-4-27f). Further, a member of the Board of Director is entitled to reimbursement for any expenses incurred in the interest of the Board of Directors. (Ind. Code § 36-9-4-20). It is deemed inappropriate to require these individuals to advance personal funds. To overcome this situation, FWPTC may provide credit cards to the above named individuals to use for travel expenses.

There are other times when it becomes necessary for these individuals to incur other FWPTC-related expenses, e.g. fuel for FWPTC vehicles. The use of the credit cards for reasons other than travel must be approved by the General Manager. The individual using the credit card is required to provide receipts detailing the nature of the expense. The expenditures and receipts must be itemized on an official expense report.

3. PROCUREMENT PROCESS

3.1 PLANNING

3.1.1 Determine Requirement

FWPTC will review all proposed procurements to avoid purchase of unnecessary or duplicate items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase so long as it is not done artificially to create a small purchase procurement. Where appropriate, an analysis will be made of lease versus purchase alternative and any other appropriate analysis to determine the most economical approach.

As part of this procurement planning, the following should be undertaken: (1) determine the needs of each department; (2) forecast price and availability of items/materials; and (3) develop a purchasing schedule based on priorities. Once this has been accomplished and at the appropriate time, a request shall be presented to the General Manager or appropriate Department Supervisor for authorization to proceed with the procurement. The General Manager or Department Supervisor will specify the method of procurement and assign responsibility for specification development.

FWPTC will ensure that all pre-qualified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, potential bidders shall not be precluded from qualifying during the solicitation period.

3.1.2 Develop Specifications

A clear and accurate description of the technical requirements for the material, product, or service to be procured shall be developed in a manner that provides for full and open competition. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. 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. FWPTC shall use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, other than by inspection and analysis, in time for the acquisition under consideration. Further, when using a "brand name or equal", FWPTC must carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

All requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals must be included in the specifications. This shall include, but not be limited to, the following: delivery schedules, progress report requirements, technical evaluation criteria, and special terms or conditions. If options are included, the provisions of Section 2.8 must be followed.

Specifications under normal circumstances shall be prepared by the user department and be approved by the General Manager, or his designee. The General Manager, or his designee, will coordinate with the user department to determine the most appropriate method of procurement.

3.1.3 Insurance

The Contracting Officer (or an agent working on behalf of FWPTC) will review FWPTC's contractual involvements to evaluate such contract's impact on FWPTC's exposure to risks. FWPTC will identify exposures with the view of risk to FWPTC in mind, and will define a plan of insurance and safety commensurate with the risk. The evaluation process for each procurement is subjective; therefor, insurance and safety requirements will vary commensurate with the risk to FWPTC. The range for insurance requirements will be from none to quite extensive. Coverages and limits, so dictated, will be maintained within the bounds of "reasonable and prudent", in keeping with sound procurement practice.

When insurance is required, a detailed form stipulating the exact requirements will be attached to the specifications. The insurance requirements will be in a format that can be added verbatim to the IFB or RFP. Insurance companies providing insurance will be required to meet or exceed certain ratings as specified by FWPTC. They must be licensed in Indiana. FWPTC also requires that FWPTC and McDonald Transit Associates, Inc. be named as additional insureds, and that FWPTC be given thirty (30) days advance notice by the carrier of cancellation or renewal.

Questions regarding matters of insurance pertaining to the contract shall be addressed to the Contracting Officer. Certificates of Insurance required in the contract will be submitted to the Contracting Officer. If the insurance is not in order, the Contracting Officer will identify the areas of non-compliance and implement whatever procedure is necessary to correct the matter. The Contracting Officer will monitor compliance with insurance requirements throughout the duration of the contract and will correct matters of non-compliance. The Contracting Officer is responsible for obtaining renewal certificates during the life of the contract.

The contractor will be required to report all claims to their appropriate insurance carrier. Incidents that may result in claims against the contractor and/or FWPTC should be reported to the Contracting Officer immediately, who shall investigate the report on behalf of FWPTC.

Upon contract completion and settlement of all insurance and/or litigation, all documents that could be relevant to the contract will be forwarded to the Contracting Officer for inclusion in the contract file.

3.1.4 DBE Requirements

The Contracting Officer shall consult with the DBE Officer and the Department Supervisor and establish appropriate participation goals for DBE contractors. A contract project goal may be established, which ranges from zero percent (0%) to a percentage in excess of the annual DBE goal reported to the FTA, depending on the determination of the availability of DBE firms to provide the product or service. This goal is incorporated in the evaluation criteria for a RFP procurement. In all contracts, FWPTC may require the contractor to report DBE participation levels, whether a goal has been set or not.

3.1.5 Leasing

Leasing in place of outright purchases may be utilized to acquire equipment if, after evaluation of the cost of leasing vs. purchasing, leasing as opposed to outright purchasing would result in cost savings to FWPTC. This may be especially true when a piece of equipment is needed for nonrecurring purposes. If leasing is to be used, the procedures for entering into a lease shall be the same as the procedure for a procurement whose total cost is equivalent to the total of the proposed lease payment or the total annual rental payments, whichever is less. If the lease is to extend beyond the current budget year, it must be subject to approval of future budget appropriation to cover the lease.

3.2 SOURCE SELECTION

3.2.1 Solicitation

The General Manager, or his designee, is responsible for assembling the solicitation package. A solicitation package may include instructions to offerors, specifications, the special terms and conditions, contract provisions required by the State or Federal government, the proposed contract, and/or the evaluation criteria that will be utilized to determine contractor selection.

Solicitations for Professional/Personal Services (other than architectural and engineering) such as legal services, audit services, management consultants, and other professional services, shall require submittal of both technical and cost proposals.

All departments and groups involved in purchases shall review the portions of the solicitation package for which they are responsible. When all reviews have been completed, the General Manager, and/or designee, will approve the final documents for advertisement or obtaining quotes.

The General Manager, or his designee, will be responsible for coordinating all formal bids and placing the required advertisements. Bids will be solicited from a sufficient number of vendors. Bidders shall be provided sufficient time to respond to IFBs/RFPs. All bids for public works (construction) must be submitted with State Board of Accounts Form 96.

3.2.1.1 Required Clauses

The Contracting Officer will assure that all the applicable federal, state, and local clauses are included in the solicitation package. Appendix 6.1 summarizes the various clauses and certifications required for various types and amounts of contracts.

3.2.1.2 Request for Quotations

For all purchases/proposals under Twenty-five Thousand Dollars (\$25,000.00), unless advertising was determined by the Board of Directors or the General Manager and/or his designee to be advantageous, quotations shall be solicited in accordance with Section 2.2 (Small Purchases). Quotations shall be noted on or attached to the request for purchase form.

3.2.1.3 Advertising

All bids/proposals in excess of Twenty-five Thousand Dollars (\$25,000.00) and all purchases and proposals under Twenty-five Thousand Dollars (\$25,000.00) for which the Board of Directors or the General Manager or his designee have required advertising, shall be advertised in a newspaper of general circulation in Fort Wayne two (2) times, at least one (1) week apart, with the second publication made at least seven (7) days before the date the bids will be received, pursuant to Ind. Code § 5-3-1-2(e).

For nonstandard commercial items, the first publication shall be at least thirty (30) calendar days before the date the bids will be received and the second publication made at least ten (10) calendar days before the bids will be received. For some items, it may be appropriate to publish the first notice more than thirty (30) calendar days before receiving bids to give all bidders adequate time to prepare bids.

In those instances when bidders are given an opportunity to make submittals for approved equals before bid submittal, the second publication should be at least ten (10) calendar days before the last day for making any pre-bid submittals.

If the size and nature of the procurement warrants, it shall also be advertised in local and national special circulation newspapers. If the project complexity warrants wider circulation to insure adequate competition, advertising shall be placed in trade journals/magazines or other mass communication media.

The advertisement shall include notice of the time and place for reviewing and opening bids, where the specifications are available for public inspection, any bond requirements and all required clauses as provided in Appendix 6.1. No procurement requests for which advertising is required as specified above, including IFBs and RFPs, shall be provided to any bidder, or potential bidder, before making a public advertisement.

3.2.1.4 Bid and Performance Bonds

The General Manager is responsible for determining when bid and performance bonds are to be required, and for indicating the bond requirements in the Legal Notice to Bidders.

There shall be a bid bond or certified check of five percent (5%) of the contract price on all contracts for public works projects of Two Hundred Thousand Dollars (\$200,000) or greater (Ind. Code § 36-1-12-4.5).

There may be a performance bond on all public works projects. The FWPTC may require a contractor's payment bond on all public works projects costing Fifty Thousand Dollars (\$50,000) or more. For public works projects costing less than Fifty Thousand Dollars (\$50,000), the General Manager may require a contractor's payment bond.

FWPTC may require a certified check or a bid bond of five percent (5%) of the contract price for all contracts for purchase of materials in which the contract price exceeds One Hundred Thousand Dollars (\$100,000.00).

For any bond or certified check requested for a public works project, the amount of such bond or certified check shall not exceed more than ten percent (10%) of the contract price. The bond or certified check shall be made payable to the political subdivision or agency.

3.2.1.5 Liquidated Damages

For purposes of this Procurement Policy, "liquidated damages" are an amount assessed a contractor when it fails to complete delivery, installation, services, or the work specified in a contract within the contract period of performance or schedule, which causes increased costs to FWPTC or FTA. The Contracting Officer shall determine whether or not use of a liquidated damages provision is appropriate for each specific procurement. The amount of liquidated damages must be reasonable to compensate FWPTC for possible damages and not be so large as to be construed as a penalty. FWPTC should not include such provisions in a contract unless:

(1) The time of delivery is of such importance that FWPTC can reasonably expect to suffer damage if the delivery is delinquent;

(2) FWPTC determines that the delivery schedule is reasonable at the time of award; and

(3) Damages would be difficult or impossible to establish.

If it is determined that a liquidated damages clause is necessary in a contract, the Contracting Officer shall document the derivation of the rate of assessment and ensure it is reasonable, proper, and not arbitrary. If there is a liquidated damages provision, it shall always be enforced and never waived or compromised in any way.

3.2.1.6 Communications with Bidders and Potential Bidders

The Contracting Officer will provide technical assistance and guidance to bidders and prospective bidders. Communications with bidders and potential bidders after the RFP/IFB is issued will be only through the Contracting Officer or, if designated, Legal Counsel. After the release of the RFP/IFB, all other communication must be in writing to the Contracting Officer or, if designated, Legal Counsel. FWPTC staff will redirect all inquiries from bidders and prospective bidders to the Contracting Officer or Legal Counsel. The Contracting Officer or Legal Counsel, shall send written responses to all bidders and prospective bidders.

3.2.1.7 Receiving and Safeguarding Sealed Bids

Upon receipt of sealed bids/proposals, the FWPTC representative shall document the date and time he/she received such bids/proposals and include his/her name in an official log that will be maintained at FWPTC's premises. Thereafter, all sealed bids/proposals shall be maintained at FWPTC's premises, unopened, until the date and time designated for opening. After receiving all sealed bids/proposals, they will be secured by the Contracting Officer, who shall deny access to all others until the time for bid opening. The information contained in the sealed bids/proposals, including the number or identities of offerors shall not be made available to the public or to anyone at FWPTC not having a legitimate interest or need to know.

3.2.1.8 Bid/Proposal Opening

On the date and time designated for opening the bids, the following procedures shall be followed:

(1) The Chairman of the Board of Directors, General Manager or his/her designee shall take each bid, one at a time, and determine the name of the bidder and announce the name;

(2) The bid shall then be examined to determine if it has the following:

(a) A signed bid using the form prescribed by the State Board of Accounts (See Appendix 6.4);

(b) A bond or certified check payable to FWPTC in the correct amount, if required. If a bond is required, the bid should contain a power of attorney. The power of attorney shall grant the person signing the bond with the authority to sign and be dated the same day as the bid;

(c) An executed affidavit of non-collusion. (Part of State Board of Accounts form shown in Appendix 6.4)

(3) If any of the requirements prescribed in (a), (b), or (c) above is missing, then the Chairman of the Board of Directors, General Manager or his/her designee shall declare the bid as "non-responsive," shall state the reason for such determination and shall return it to the bidder;

(4) If the requirements prescribed in a, b, and c above are met, then the Chairman of the Board of Directors, General Manager or his/her designee shall read aloud the bid amount. If several items are included, he/she can read the major items and amounts and make the bid available for further inspection by the public, unless someone requests that all amounts be read aloud;

(5) The Board of Directors should then either award a bid or preferably turn all such bids over to management for evaluation and recommendations at the next meeting of the Board of Directors. The Board of Directors, may at its discretion, authorize the General Manager to proceed with awarding the contract after management's review of the bids to determine the lowest responsive and responsible bidder and report to the Board of Directors at its next regular meeting to whom the contract was awarded.

3.2.1.9 Withdrawing Bids/Proposals

After the bids are opened, bids may not be withdrawn for sixty (60) calendar days. However prior to the date/time set for bid openings, bids may be modified or withdrawn by the bidder's authorized representative in person, or by written or telegraphic notice. If bids are modified or withdrawn in person, the authorized representative shall make his/her identity known and shall sign a receipt for the bid. Written or telegraphic notices shall be received by FWPTC no later than the exact date/time for bid opening. A telegraphic modification or withdrawal received in the designated office by telephone from the receiving telegraph office no later than the date/time set for bid opening shall be considered if such message is confirmed by a copy of the telegram.

3.2.2 Evaluation

When bids are opened, they will be tabulated and retained by the Contracting Officer until award is recommended. The Contracting Officer shall place copies of bids and bid tabulations in the contract files.

3.2.2.1 Responsive Bidders

The General Manager, based on the Contracting Officer's recommendation, shall determine if each bidder is responsive. The responsiveness of the bid shall be determined by its conformance to the technical and legal requirements of the bid documents, including the submission and execution of all required certifications.

In a formally advertised procurement transaction, any bid that fails to conform to the essential requirements (specifications, terms, and conditions) shall be deemed non-responsive, and accordingly, rejected. Examples of some instances that render a bid non-responsive are:

(1) Bidder attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to FWPTC cannot be determined;

(2) Bidder states a price, but qualifies such price as being subject to price in effect at time of delivery;

(3) When not authorized by the invitation, the bidder conditions or qualifies its bid by stipulating that the bid is to be considered only if, prior to date of award, the bidder receives award under a separate procurement; and

(4) Bidder takes exception to the terms and conditions by limiting FWPTC's rights under any clause or by extending the delivery period.

Bidders sometimes are required or motivated to submit additional material with their bids. Examples are bid samples, descriptive literature, bid bonds, requests for progress payments, and requests for use of Government-furnished property. With the exception of the bid bond, if these things are not provided for in the invitation (or request) they will not be considered in evaluating the bid. However, FWPTC may, at its discretion, review these things and if they materially deviate from the invitation (or request), then the bid submitted is conditional and may not be accepted. If a contract is awarded the additional material will not be considered part of the contract; and the contractor will be required to meet the requirements of the invitation (or request).

Similarly, where a bid bond is required in an invitation for a construction contract, or a bid sample or descriptive literature is required by an invitation (or request) for evaluation purposes, the failure to furnish the requested item requires that the bid be rejected. It is essential when requiring submission of bid samples, or descriptive data, with the bids that the invitation (or request) clearly advise bidders of the need for, and the result of, the failure to submit the required item.

However, a deviation which is only a matter of form or is immaterial and has no effect on quantity, quality, or delivery, and has a merely trivial effect on price, may be waived as a minor informality or irregularity, if it does not prejudice or affect the relative standing of bidders.

Any clerical mistake apparent in the face of a bid may be corrected by FWPTC prior to award, if FWPTC first obtains from the bidder written or telegraphic verification of the bid actually intended. The bid shall be corrected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. FWPTC shall correct the face of the bid and shall make sure the correction is reflected in the award document.

When a mistake in a contractor's bid is not discovered until after the award, the mistake may be corrected by contract modification, if correcting the mistake would make the contract more favorable to FWPTC without changing the essential requirements of the contract.

3.2.2.2 Responsible Bidders

The General Manager, based on the Contracting Officer's recommendation, shall also determine if each bidder is responsible. FWPTC shall award contracts only to responsible bidders who possess the ability, willingness and integrity to perform successfully under the terms and conditions of a proposed procurement. Responsibility is a procurement issue that is determined by FWPTC after receiving bids, but before making the contract award. Here, "responsibility" is defined as the "capability to perform." In addition to being otherwise qualified and eligible to

receive the contract award under applicable laws and regulations, pursuant to FTA C 4220.1F, a responsible contractor must show:

(1) **Integrity and Ethics**. It has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. § 5325(j)(2)(A);

(2) **Debarment and Suspension**. It is neither debarred nor suspended from Federal programs under DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 180 or under the FAR at 48 CFR Chapter 1, Part 9.4;

(3) **Affirmative Action and DBE**. It is in compliance with the public policies of the Common Grant Rules’ affirmative action and FTA’s DBE Requirements;

(4) **Public Policy**. It is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. § 5325(j)(2)(B);

(5) **Administrative and Technical Capacity**. It has the necessary organization, experience, accounting and operational controls and technical skills, or the capacity to obtain them, in compliance with 49 U.S.C. § 5325(j)(2)(D);

(6) **Licensing and Taxes**. It is in compliance with the applicable licensing and tax laws and regulations;

(7) **Financial Resources**. It has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. § 5325(j)(2)(D);

(8) **Production Capability**. It has, or can obtain, the necessary production, construction, and technical equipment and facilities;

(9) **Timeliness**. It is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments, and

(10) **Performance Record**. It is able to provide a:

(a) **Current Performance**. Satisfactory current performance record, and

(b) **Past Performance**. Satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:

1. **Sufficient Resources**. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,
2. **Adequate Past Experience**. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient’s solicitation, and
3. **Any Past Deficiencies Not the Fault of the Bidder or Offeror**. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be nonresponsible, unless the recipient determines that the circumstances were properly beyond the bidder or offeror’s control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. FTA expects the recipient to consider the number

of the bidder or offeror's contracts involved and the extent of deficient performance in each contract when making this determination.

The burden of proof of responsibility rests with the bidder. The bidder must affirmatively demonstrate its responsibility and, when necessary, the responsibility of any proposed subcontractors. If information obtained by FWPTC indicates that the bidder is not responsible and FWPTC has doubts about the productive capacity or financial strength of a bidder, which cannot be resolved affirmatively, a determination that the bidder is non-responsible should be rendered.

3.2.2.3 Evaluation Committee and Criteria (RFP)

At or before the opening of a RFP, the General Manager shall recommend to the Board of Directors the creation of an evaluation committee. It may consist of the:

- (1) General Manager;
- (2) Contracting Officer;
- (3) Department Supervisors;
- (4) DBE Officer;
- (5) members of the Board of Directors; and/or
- (6) Others, as designated.

The Contracting Officer shall establish written evaluation criteria for the procurement that shall be a part of the solicitation. The weighing of the selection criteria will be established in writing prior to the opening of any proposals. Based on these criteria and associative weights, the evaluation committee shall evaluate all proposals. The recommendation of evaluation committee shall be consistent with the solicitation evaluation criteria and weights.

3.2.2.4 Cost/Price Analysis

FWPTC will perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts surrounding the particular procurement situation, but as a starting point, FWPTC will make independent estimates before receiving bids, quotes or proposals.

(1) Cost Analysis. A cost analysis must be performed when a price analysis will not provide sufficient information for FWPTC to determine the reasonableness of the contract cost. FWPTC must obtain a cost analysis when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, e.g., under professional consulting, architectural and engineering services contracts. FWPTC must also obtain a cost analysis when adequate price competition is lacking, when only a sole source is available (even if the procurement is a contract modification) or in the event of a change order. FWPTC does not need to obtain a cost analysis if it can justify price reasonableness of the proposed contract based on catalog or market price of a commercial product sold in substantial quantities to the general public or on the prices set by law or regulation.

- (A) Federal Cost Principles. Federal cost principles contain many requirements about the allowability and allocability of costs.
- (B) Establishing Indirect Cost Rates. For contracts other than Architectural Engineering contracts discussed in Subsection 3(f) of FTA C 4220.1F, if the third party contractor or subcontractor does not have an approved Government indirect cost rate agreement, the contract's dollar value should determine how that rate is verified.

- (i) Contracts of \$5 Million or Less. FTA will accept the audit recommendations of the contractor's certified public accountant, or indirect cost information in the contractor's annual statement to their stockholders, shareholders, or owners, or examples of acceptance of their rates by other governmental agencies within the last six months.
- (ii) Contracts Exceeding \$5 Million. If the contract exceeds \$5 million, then the Defense Contract Audit Agency, another Federal cognizant audit agency, or an accounting firm approved by the Federal Government to perform audits for the Federal Government, must verify the contractor's rates.

(C) Profit. FWPTC shall negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which FWPTC performs or acquires a cost analysis. To establish a fair and reasonable profit, FWPTC shall consider the complexity of the work to be performed, the risk undertaken by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(2) Price Analysis. If competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price.

Costs incurred or cost estimates included in negotiated prices must be consistent with federal cost principles. The cost plus a percentage of cost and percentage of construction cost methods of contracting will not be used.

3.2.3 Negotiations

The Contracting Officer is responsible for all negotiations of contracts resulting from RFPs. All proposers selected to participate in negotiations shall be advised of deficiencies in their proposals and shall be offered a reasonable opportunity to correct or resolve the deficiencies and to submit such price or cost, technical, or other revisions to their proposals that may result from the discussions. For purposes of this Procurement Policy, a "deficiency" is defined as that part of a proposal which would not satisfy FWPTC's requirements.

Discussions shall not disclose the strengths or weaknesses of competing proposers or disclose any information from any proposal which would enable another proposer to improve his proposal as a result thereof. A summary of the negotiations shall be included in the contract file.

3.2.4 Selection

(1) Award Only to a Responsible Bidder. FWPTC shall award contracts only to those contractors that have been deemed "responsible" pursuant to Section 3.2.2.2 above.

(2) Award to Other Than the Lowest Bidder. FWPTC may award a contract to other than the lowest bidder when:

- (a) the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs; and
- (b) FWPTC acknowledges in the evaluation factors of the solicitation that it reserves the right to award the contract to other than the low bidder.

In both cases, FWPTC shall include a statement in its solicitation document reserving the right to award the contract to other than the low bidder. If FWPTC elects to award an IFB or small purchase procurement to other than the low bidder, FWPTC shall prepare and place into the contract a file a memorandum documenting its reasoning. This

memorandum shall also be placed in the minutes of the Board of Directors if it made the decision not to accept the lowest proposal.

(3) Rejection of Bids and Proposals. FWPTC may reject all bids submitted in response to an invitation for bids or request for proposals.

3.2.5 Award

Within sixty (60) calendar days after the bid opening, the General Manager shall sign the **Solicitation, Offer and Award** form submitted by the successful bidder and shall deliver the executed contract documents within twenty (20) calendar days after the signing. Delivery of contract documents shall be determined by the Contractor's signature on the return receipt request.

Upon award of the contract, the Contracting Officer will return bid bonds to the unsuccessful bidders. The Contracting Officer may notify the unsuccessful bidders in writing. Bid bonds submitted by the successful bidder will be retained by the Contracting Officer. The Contracting Officer will obtain an executed contract, performance bond and certificate of insurance, if required, and place them in the contract file.

3.2.6 Protest Procedures

For the purpose of this sub-section, the following definitions shall apply:

- (1) DAYS: Refers to calendar days
- (2) FILE OR SUBMIT: Refers to the date of receipt by FWPTC;
- (3) INTERESTED PARTY: Refers to an actual or prospective bidder, or offeror, whose direct economic interest would be affected by the award of the contract, or by failure to award the contract.
- (4) FEDERAL LAW OR REGULATION: The violation of any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to a grant agreement, including the requirements set forth in FTA C4220.1F.

3.2.6.1 General

FWPTC will consider all written protests requested in a timely manner regarding the award of a contract, whether submitted before or after an award. All protests shall be submitted in writing, shall be concise and shall clearly state all relevant grounds for the protests. FWPTC shall disregard all oral protests and all protests that do not comply with FWPTC's procedural requirements set forth herein.

Protests may be made by actual or prospective bidders/proposers whose direct economic interests would be affected by the award of a contract or by failure to award a contract. Protests must include at least the following information:

- (1) Name, address, and telephone number of protester;
- (2) Identification of the solicitation or contract, of which the protest concerns;
- (3) A detailed statement of the substantive legal and factual grounds of the protest, including copies of all relevant documents; and
- (4) A statement as to what relief is requested.

All protests are to be sent to FWPTC at the following address, unless otherwise specified in the solicitation:

Fort Wayne Public Transportation Corporation
Attn: _____(Contracting Officer)
801 Leesburg Road, Fort Wayne, IN 46808.

The Contracting Officer may request additional information from the protesting entity and information or responses from other bidders. Each entity shall have five (5) days from its receipt of such request from FWPTC to render a written response or else waive its right to participate in the protest proceeding.

When making a decision concerning a protest, FWPTC shall consider all information and documentation provided in the written protest and all written response(s) to FWPTC's request(s) for additional information, if any, submitted by the protesting entity and other bidders. Upon receipt and review of all written submissions and following any independent evaluation deemed appropriate by FWPTC, the Contracting Officer shall either (a) render a decision on all substantive issues, or (b) at the sole election of the Contracting Officer, conduct an informal hearing at which the interested participating parties will be afforded the opportunities to present their respective positions and facts, documents, justification, and technical information in support thereof. Following the informal hearing, the Contracting Officer shall render a decision on all substantive issues, which shall be final, and advise all interested parties thereof in writing, but no later than ten (10) days from the date of the informal hearing.

The decision to open a bid or award a contract prior to the resolution of a protest rests with FWPTC. However, on any protest that is accepted by FTA, an adverse decision on the protest by FTA could jeopardize funding for that procurement action.

To ensure that all potential bidders/offerors are aware of FWPTC's protest procedures, FWPTC procedures shall be included or referenced in the solicitation document. If the procedures are referenced, FWPTC shall include information on how the procedures may be acquired by any interested party. When the procedures are requested, they shall be provided promptly.

3.2.6.2Pre-Bid Opening

Bid protests alleging restrictive specifications or improprieties which are apparent prior to bid opening or receipt of proposals must be submitted in writing to the Contracting Officer and must be received seven (7) days prior to bid opening or closing date for receipt of bids or proposals. If the written protest is not received by the time specified, bids or proposals may be received and award may be made in the normal manner, unless the Contracting Officer determines that remedial action is required. Where a written protest against the opening of a bid is received in the time specified, bid opening will not occur prior to seven (7) days after resolution of the protest unless FWPTC determines that:

- (1) The items to be procured are urgently required;
- (2) Delivery or performance will be unduly delayed by the failure to award the contract promptly; or
- (3) Failure to award the contract will otherwise cause undue harm to FWPTC or the Federal Government; and
- (4) If FTA funds are involved, FWPTC is willing to pay all the cost of the project if the FTA decides not to participate in the funding of the project.

3.2.6.3Pre-Award

Bid protests against the awarding of a contract must be submitted in writing to the Contracting Officer and received by the Contracting Officer within seven (7) days of the bid opening by the Board of Directors. When FWPTC receives a protest, it may elect to withhold the awarding of the contract until after disposition of the protest. FWPTC shall give written notice of the protest, the basis thereof, and, if applicable, its decision to withhold the awarding of the contract to all bidders or proposers. Before expiration of the time originally set for acceptance, all

parties that have submitted bids/proposals to FWPTC shall give written notice of their intentions to extend the duration of their bids/proposals or to withdraw their bids/proposals.

Where a written protest against the making of an award is received in the time specified, FWPTC shall not award the contract prior to seven (7) days after resolution of the protest unless FWPTC determines that any one of the four reasons set forth in Section 3.2.6.2 apply.

3.2.6.4 Post-Award

In instances where the award has been made, the contractor shall be furnished with the notice of the protest and the basis therefor. If the contractor has not executed the contract as of the date the protest is received by FWPTC, the execution of the contract will not be made prior to seven (7) days after resolution of the protest, unless FWPTC determines that any one of the four reasons set forth in Section 3.2.6.2 apply.

3.2.6.5 Appeals

Appeals and requests for reconsideration of the final determination of the Contracting Officer of protests under Section 3.2.6.2, 3.2.6.3 and 3.2.6.4 must be submitted, in writing, to FWPTC's Appeals Committee within seven (7) days after the date of the written determination by the Contracting Officer. The Appeals Committee shall be the General Manager unless the Contracting Officer is the General Manager. If the Contracting Officer and the General Manager for a procurement are the same person, then the Appeals Committee shall consist of a committee of members of the Board of Directors with members appointed by the Chairman of the Board of Directors.

The Appeals Committee may request additional information from the appealing party and information or a response from other bidders, which shall likewise be submitted in writing to the Appeals Committee. Each party shall have ten (10) days from its receipt of such request from FWPTC to submit a written response or else waive its right to participate in the appeals proceeding.

When making a decision on an appeal, FWPTC shall give consideration to all information and documentation provided in the written appeal and all written response(s) to FWPTC's request(s) for additional information, if any, submitted by the appealing entity and other bidders. Upon receipt and review of written submissions and following any independent investigation deemed appropriate by FWPTC, the Appeals Committee shall either (a) render a decision, or (b) at the sole election of the Appeals Committee, conduct an informal hearing at which the interested participating parties will be afforded the opportunities to present their respective positions and facts, documents, justifications, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, the Appeals Committee shall render a decision, which shall be final and advise all interested parties thereof in writing, but no later than ten (10) days from the date of the informal hearing.

3.2.6.6 Protests to Federal Transit Administration (FTA)

Under certain limited circumstances, an interested party may protest to the FTA the award of a contract pursuant to an FTA grant. FTA's review of any protest will be limited. FTA will consider a protest if FWPTC, allegedly:

- (1) Does not have written protest procedures;
- (2) Has not complied with its protest procedures; or
- (3) Has not reviewed the protest when presented an opportunity to do so;

FTA will exercise discretionary jurisdiction over those appeals involving Federal laws or regulations important to FTA's overall public transportation program.

Protesters shall file a protest with FTA no later than five (5) Federal working days after the date when the protester has received actual or constructive notice of FWPTC's final decision. The protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the

program office administering its project within five (5) Federal working days of the date when the protester has identified other grounds for appeal to FTA. Protesters appealing to the appropriate FTA office shall provide a concurrent copy to the FWPTC.

The protest filed with FTA shall:

- (1) Include the name and address of the protester;
- (2) Identify the FWPTC project at issue;
- (3) Contain a statement of the grounds upon which the protester bases its appeal, including any supporting documentation; and
- (4) Include a copy of the local protest filed with FWPTC and a copy of the FWPTC decision, if any.

When a protest has been timely filed with FTA before award, FWPTC shall not make an award prior to five (5) business days after the resolution of the protest, unless FWPTC determines that any one of the four reasons set forth in Section 3.2.6.2 apply.

In the event that FWPTC determines that the award is to be made during the five (5) business-day period following the local protest decision or while a protest is pending, FWPTC shall notify FTA prior to making such award. FTA will not review the sufficiency of FWPTC's determination to award during the pendency of a protest prior to FTA's bid protest decision. FTA reserves the right not to participate in the funding of any contract awarded while a protest is pending. After five (5) business days, FWPTC shall confirm with the FTA that it has not received a protest on the contract in question.

3.3 CONTRACT ADMINISTRATION

3.3.1 Project Management

The General Manager may, when appropriate, designate a Project Manager for each project. When no Project Manager is designated, the Contracting Officer shall carry out the Project Manager's responsibilities. It shall be the Project Manager's responsibility to ensure that the contractor performs in accordance with the terms, conditions, and specifications of the contract or purchase order. Generally, the Statement of Work in the contract defines specific tasks, milestones, and review procedures which vary depending on the specific project. The Project Manager shall provide technical direction to the contractor and respond to correspondence on technical matters from the contractor's designated representative. A copy of all correspondence shall be provided to the Contract Officer. The Project Manager shall monitor the progress of the work on a regular basis.

The contractor is required to document the amount of time and money spent on the work on a periodic basis specified in the contract. The Project Manager shall review the contractor's documentation and invoices in relation to the milestones, work expended to date, and budgeting information. The Project Manager shall advise the Contracting Officer if the contractor is not in compliance with the contract. The Contracting Officer shall take appropriate actions. The Project Manager shall also review invoices for accuracy and content and then, if acceptable, forward to the Contracting Officer.

3.3.2 Contract Amendments and Change Orders

Change Orders are written orders, signed by the Contracting Officer, directing the contractor to make a change authorized by the contract's changing clause, with or without the contractor's consent. Contracts awarded by FWPTC should contain these "*Changes*" clauses. In order for the change to be binding on the contractor, it must be within the general scope of the contract and be one of the types of changes described in the *Changes* clause. FWPTC shall obtain approval of the FTA whenever a change order would result in the need for additional funding

from the FTA. A cardinal change is a contract change falling outside the scope of the original contract. Cardinal changes are sole source procurements and must be processed under Section 2.5.

The General Manager has the authority to authorize expenditures for a Change Order, provided the cost of such Change Order does not exceed Three Thousand Dollars (\$3,000.00) or ten percent (10%) of the original contract amount. The Board of Directors must first approve any Change Order if the required expenditures exceed ten percent (10%) of the original contract amount. Prior to issuing any Change Order, the General Manager shall be informed, so that a determination can be made as to the availability of funds. The Contracting Officer shall also be contacted to determine if the proposed Change Order contains a change in scope which may be grounds for bidding the extra work.

A cost analysis must be performed, unless price reasonableness can be established, based on the basis of catalog or market price of a commercial product or on the basis of prices set by law or regulation. See, Section 3.2.2.4 above.

Change orders must be prepared in triplicate. Two (2) copies will be retained for the contract file. The third will be returned to the contractor. The adjustment may be in the form of an under run (adjusting the contract amount downward due to unanticipated savings), or in the form of an overrun (adjusting the contract upward due to extra work). The Contracting Officer is responsible for preparing change orders.

1. General - If, in the course of the work, it becomes apparent that a change in the Statement of Work is required, the Project Manager will initiate a request to the Contracting Officer for a Change Order, explaining its justification pursuant to the contract's "*Changes Clause*." The Project Manager will also provide a cost or price analysis of the proposed changes, and provide changes to the Statement of Work and required documentation to the Contracting Officer. The Contracting Officer will notify the General Manager to determine if the change order can be funded, prior to signing any changes. The Statement of Work, change in schedule, and cost of any change, if any, are to be negotiated with the contractor by the Contracting Officer before the change order is processed, in accordance with procedures and delegation of authority. The Project Manager has a continuing responsibility to monitor the contractor's work progress until it is completed and the product or service is accepted by FWPTC. The Project Manager must notify the Contracting Officer when the work is completed.

2. Construction - FWPTC staff may be augmented by the use of a consultant for construction management designated as the Construction Manager. The Construction Manager must have already acquired certain educational, training and experience requirements pertaining to the following non-exhaustive subjects: basic contract administration, cost and price analysis, contracting officer's representation, construction contracting basics, contracting by negotiation, changes under contracts, federal contract law, construction claims and contracting by sealed bidding. For technical matters, the Construction Manager works for the Project Manager. However, the Construction Manager does have obligations to the Contracting Officer as defined in the letter of appointment.

Every construction contract should include a *Changes* clause giving FWPTC the unilateral right to order changes to the contract during the course of performance thereof. However, in order for a change to be binding, it must be within the general scope of the original contract and be one of the type of changes described in the *Changes* clause. The *Changes* clause must contain language deferring the pricing of the changed work until some later time, while obligating the contractor to proceed with the work and resolve the issue of compensation later. Failure to reach an agreement on compensation would be a dispute to be processed according to the procedures set forth in Subsection 3.2.6 above.

Construction changes will be originated from the Construction Manager or, in his absence, the Project Manager. If applicable, the Construction Manager will forward the change order to the Project Manager. The change order will define the scope of and reason for the change with an order of magnitude estimated cost. It will be reviewed by the Construction Manager to determine that it is not already a contract requirement, that it is really needed and the scope reflects only the need. After a favorable determination, the Project Manager will approve the pending change with the concurrence of the Contracting Officer. A copy will be forwarded to the contractor through appropriate channels with a request to prepare a proposal to make the change. For differing site conditions or emergencies, this review will be after the fact and a ratification of the previous verbal actions.

When the contractor's proposal, the estimate, and the schedule are in hand, the Contracting Officer, in conjunction with the Project Manager, will develop FWPTC's negotiation position and will schedule negotiations with the contractor utilizing the assistance of the Construction Manager as appropriate. Negotiations will be conducted with the contractor and documented. If negotiations are not successful, the Disputes Section of the contract becomes applicable. If successful, a change order will be prepared and executed by both parties. All changes will be executed by the General Manager. The cumulative value of all changes for a contract may not exceed ten percent (10%) of the original award amount without the approval of the Board of Directors.

The change order file shall contain reason/scope of change, record of negotiations, contractor's proposal, estimate and schedule as appropriate. The agreed cost of the change order will be debited or credited to the original contract price.

3.3.3 Contract Files

All contract files are to be maintained on the property of the FWPTC. Only limited access to the files is provided. To insure that all pertinent and required documentation is contained within a standardized filing system, at a minimum, the following documentation will be incorporated in the contract file (*Procurement Checklist*):

- (1) ICE (Independent Cost Estimate);
- (2) Purchase requisition;
- (3) Rationale for method of procurement;
- (4) Selection of contract type;
- (5) Solicitation document (IFB, RFP, technical spec.);
- (6) Bid requirements and conditions;
- (7) General contract provisions;
- (8) Legal notice to bidders, if applicable;
- (9) Bid and performance bond data, including justification;
- (10) Pre-bid independent cost estimate, when required;
- (11) Summary of bid evaluation;
- (12) Summary of negotiations;
- (13) Price or cost analysis;
- (14) Search of EPLS (Excluded Party List System)
- (15) Authorizing resolution, if applicable;
- (16) Master contract and modifications;
- (17) Contract amendments or change orders, and associated cost analysis;
- (18) Progress reports, vendor correspondence, etc.;
- (19) Contractor selection or rejection;

- (20) Pre-award and post-delivery purchaser requirements, Buy America and FMVSS certifications;
- (21) Required Third-Party Contract Clauses;
- (22) Applicability of Third-Party Contract Clauses;
- (23) Weekly payroll sheets as required by Davis-Bacon Act;
- (24) Release of liens, materials, and payments bonds, etc.; and
- (25) Insurance documents

Each file is maintained and controlled by the Contracting Officer. FWPTC shall document all instances where contract files are removed and/or reviewed.

3.3.4 Inspection and Acceptance

The Project Manager shall be responsible for determining, through inspection, if the equipment, services, and/or supplies delivered meet the specifications or statement of work. The Project Manager may delegate the actual inspection of the same to a third party contracted to provide such required inspection services. Upon completion of the inspection, the Project Manager shall report to the Contracting Officer whether the equipment, services, and/or supplies are acceptable. If acceptable, the Contracting Officer shall request the General Manager's approval to proceed with contract close out and final payment. The Contracting Officer shall then notify the contractor of the initiation of close-out procedures. This notification shall contain requests for any documents necessary to close out the contract. If unacceptable, the Contracting Officer shall notify the contractor and pursue a satisfactory solution through the contract terms and conditions.

3.3.5 Contract Closeout Procedures

The Project Manager or the Contracting Officer shall create a contract closeout checklist, listing all of the administrative and physical steps required to close out the contract. For routine commodity procurements, the Project Manager or the Contracting Officer will need to ensure that he/she has inspected and accepted the deliverable items as being in conformance with the purchase order/contract specifications. An inspection/acceptance form shall be in the contract file attesting to the contractor's delivery of all contract end items, including any descriptive literature or warranty documentation. FWPTC shall also provide documentation in the contract file attesting to final payment by its accounts payable department.

Where non-routine contracts for services, construction contracts and rolling-stock contracts, etc. are at issue, a number of steps are required to affect an administrative closeout. Major elements of the closeout procedures, and related documentation, may include:

- (1) Resolution of all contract changes, claims and final quantities delivered;
- (2) Determination/recovery of liquidated damages;
- (3) Review of the insurance claim file by Legal Counsel and/or insurance specialist to determine if funds need to be withheld from final payment to cover unsettled claims against the contractor;
- (4) Settlement of all subcontracts by the general contractor, if applicable;
- (5) Performance of all inspections (and acceptance tests if any) by the Project Manager/Contracting Officer, with appropriate documentation;
- (6) Generation of a Contractor Performance Report, if elected; and
- (7) The submittal of all required documentation by the contractor, including, but not limited to, such items as:

- a. Final reports;
- b. Final payroll records and wage rate certifications;
- c. Spare parts list;
- d. Manufacturer's warranties and guarantees;
- e. Final corrected shop drawings;
- f. Operations and maintenance manuals;
- g. Catalogues and brochures;
- h. Invention disclosure (if applicable);
- i. Federally-owned property report (if there was government-furnished property);
- j. Resolution of final quantities for construction contracts;
- k. Final invoice;
- l. Consent of Surety to release final payment to Contractor;
- m. Contractor's affidavit of release of liens;
- n. Contractor's general release, releasing FWPTC from any further liabilities/claims under the contract; and
- o. Maintenance bond (if required.)

Upon return of any documents requested of the contractor, the Contracting Officer shall review the documents for completeness and, if acceptable, complete the closeout. The Contract Officer shall also initiate grant closeout procedures with the FTA, INDOT, or other federal and state agencies, as applicable, pursuant to 49 C.F.R. Part 18.50. If the documents are not acceptable, the Contracting Officer shall follow-up with the contractor to obtain the required information.

As part of close out procedures, the General Manager shall determine whether a final contract audit is required. If an audit is required, the Contracting Officer shall assist in any way possible, including in the arranging of the audit. Some events will occur prior to the contract completion date and others, such as final audit and indirect rate negotiations, may occur after the contract completion date. The Contracting Officer is responsible for insuring that contract files are closed in a timely manner and closeout actions are documented in appropriate detail.

Costs, payments and/or fees withheld pursuant to the contract provisions shall not be released to the contractor until the contractor has submitted the required closeout documents, has made final disposition of FWPTC property, and reached a final agreement with FWPTC regarding the amount of final payment due. Withheld costs and/or fees shall be included in the final payment to the contractor. The Contracting Officer, upon reaching agreement with the contractor, shall submit for approval the final request for payment.

Professional Services contract closeout will not occur immediately after the completion date of the contract, but over a period of time. Some events will occur prior to the contract completion date and others, such as final audit and indirect rate negotiations, may occur after the contract completion date. The Contracting Officer is responsible for insuring that contract files are closed in a timely manner and closeout actions are documented in appropriate detail.

Upon completion of the closeout checklist, the contract file shall be reviewed and certified as complete by the General Manager. The completed certification shall be documented in the contract file.

3.3.6 Contract Termination

The performance of work under a contract may be terminated in part, or in whole, when the Contracting Officer, in consultation with the General Manager and Legal Counsel, determines that such termination is in the best interest of FWPTC. Contracts may be terminated for convenience; i.e.; a reduced need or in the best interests of FWPTC, or for cause; i.e. the contractor has failed to perform in accordance with the contractual requirements.

When the decision to terminate a contract is made, a "Notice of Termination" shall be sent by the Contracting Officer to the contractor by Certified Mail, Return Receipt Requested. The Notice of Termination shall specify the reason for the termination, the extent to which the performance of work is terminated; i.e., in whole, or in part, and the day upon which such termination becomes effective.

After issuance of a Notice of Termination pursuant to the Termination/Default Article(s) of the contract, settlement of claims, etc., shall be accomplished as soon as possible to protect the interests of and minimize the liability of FWPTC.

Each contract awarded by FWPTC shall contain a Termination/Default Article(s) in a specific form tailored to the type of work to be done. (See, Subsection 6.3.6 below).

3.3.7 Disputes

Any dispute arising under a contract which is not disposed of by agreement shall be decided by the Contracting Officer. The contractor must present its written claim to the Contracting Officer. The Contracting Officer will review the claim and, if necessary request additional information/documentation from the contractor as required. After reviewing the claim and all additional information/documentation, the Contracting Officer shall make a written determination as to the merit of the claim within thirty (30) days of the date the dispute is submitted or of the Contracting Officer's receipt of the requested additional information/documentation, whichever occurs later. The Contracting Officer shall mail or otherwise furnish a copy of his written decision to the contractor.

If the Contracting Officer believes there is merit, even partial, he will prepare a Memorandum for the contract file stating the facts and rationale for the decision. The reasoning contained within this Memorandum shall become the basis for a change order.

If there is no merit to the contractor's dispute, then, in the written decision, the Contracting Officer will advise the contractor of its right to appeal the Contracting Officer's decision to the Board of Directors. The Board may appoint a member, or the General Manager, to hear both sides of the issue with evidence presented as applicable. The Board of Director's decision shall be final and conclusive, unless a court of competent jurisdiction determines that such decision is 1) fraudulent, capricious, arbitrary, or grossly erroneous as necessary to imply bad faith, or 2) not supported by substantial evidence. In connection with any appeal proceeding under this clause, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

4. STAFF RESPONSIBILITY

The authority and responsibility for awarding contracts rests with the Board of Directors. This authority is delegated in part in this manual by the Board of Directors to the General Manager, who may further delegate responsibilities to the Departmental Supervisors.

The specific responsibilities of the Board of Directors and FWPTC's personnel and agents are summarized as follows:

4.1 BOARD OF DIRECTORS

The responsibilities and obligations of the Board of Directors, as they pertain to procurement issues, include, but are not limited to the following:

- (1) Possessing the sole contracting authority, except if delegated to others;
- (2) Approving the awards of all non-RFP contracts, based on General Manager's recommendation, over Seventy-Five Thousand Dollars (\$75,000.00), and any others which are forwarded to the Board of Directors for its approval;
- (3) Approving the awards of all contracts resulting from RFPs over Seventy-Five Thousand Dollars (\$75,000.00) based on the recommendation of an evaluation committee. No recommendation of an evaluation committee shall be changed or modified by the Board of Directors to one that is not consistent with the solicitation criteria and weights;

- (4) Appointing committees for evaluation of such Request for Proposals;
- (5) Setting DBE annual goals based upon recommendation by DBE Officer;
- (6) Approving the transmittals before payment is made for all procurements, except as provided for in FWPTC's bylaws;
- (7) Authorizing and executing all payments related to procurement contracts;
- (8) Conducting hearings to resolve contract dispute appeals;
- (9) Authorizing disposition of surplus materials, supplies, and equipment, in accordance with the provisions set forth herein (Section 1.3.7); and
- (10) Authorizing the use of credit cards as provided in Section 2.9.

4.2 GENERAL MANAGER

The responsibilities and obligations of the General Manager, as they pertain to procurement issues, include, but are not limited to the following:

- (1) Providing final approval all routine purchases up to Seventy-Five Thousand Dollars (\$75,000.00), except as noted in Section 4.6;
- (2) Signing all FWPTC requisitions and all contracts and change orders authorized by Board;
- (3) Approving disposition of materials, supplies, and equipment as provided in Section 1.3.7;
- (4) Serving as or appointing a Contracting Officer and any alternate Contracting Officer;
- (5) Conducting hearings to resolve protest appeals with prospective bidders or proposers;
- (6) Recommending contract awards and contract changes to the Board of Directors, as required;
- (7) Approving all purchase orders/requests for purchases to certify availability of funds;
- (8) Notifying user departments when grant funds become available for purchasing capital and planning items/services;
- (9) Requisitioning funds for federally-assisted capital and planning purchases and notifying Controller when items can be paid;
- (10) Preparing, maintaining and updating, as required, federal, state, and local certifications for all IFBs, RFPs, and contracts;
- (11) Reviewing all RFPs, IFBs, and contracts;
- (12) Appointing project managers and Contracting Officers, if appropriate;
- (13) Approving invoices for payment;
- (14) Approving purchases from petty cash as addressed in Section 2.1;
- (15) Approving the exercising of all contract options;

- (16) Coordinating with Department Supervisors to determine method of purchasing, as required;
- (17) Determining when bid and performance bonds are to be required; and
- (18) Authorizing use of credit cards as provided in Section 2.9.

4.3 CONTROLLER

The responsibilities and obligations of the Controller, as they pertain to procurement issues, include, but are not limited to the following:

- (1) Preserving all vouchers for payment and disbursements;
- (2) Issuing all checks for the payments of money from the funds of FWPTC;
- (3) Prior to issuing a payment, confirming the validity of payment and, for that purpose, summoning any officer, agent, or employee of FWPTC to examine him/her under oath or affirmation relating to the payment. In such circumstances, administering the oath or affirmation;
- (4) Performing any other duties assigned by the Board of Directors or General Manager;
- (5) Receiving approved invoices;
- (6) Maintaining the appropriate general ledger account;
- (7) Assigning a claim number to each vendor for claims register; submitting claims register to Board of Directors for payment approval;
- (8) Mailing payment for those signed claim vouchers, which have been received;
- (9) Maintaining copies of all payments by FWPTC, accounts payable files and petty cash funds;
- (10) Disbursing petty cash funds for approved expenses from petty cash;
- (11) Issuing tax-exemption certificates;
- (12) Issuing blank purchase order/requisitions for purchase to Department Supervisors;
- (13) Maintaining record and account for all purchase order/requisitions for purchase assigned;
- (14) Mailing purchase order/requisitions for purchase and claim vouchers to vendors;
- (15) Comparing invoices with purchase order/requisition for purchase and, if invoice price differs from purchase order price, referring to appropriate staff member for resolution;
- (16) Receiving approved purchase order/requisitions for purchase, verifying and assigning account numbers, matching invoices with packing slips (receiving tickets, work orders, receipts) and purchase orders for approval by the General Manager;
- (17) Maintaining current inventory file of all real property and equipment; and
- (18) Maintaining procurement files consistent with Section 3.3.3.

4.4 LEGAL COUNSEL

Shall review IFB/RFP's and shall participate in any procurement matter in the manner all as requested by the Board of Directors and/or the General Manager.

4.5 DEPARTMENT SUPERVISORS

The responsibilities and obligations of the Department Supervisors, as they pertain to procurement issues, include, but are not limited to the following:

- (1) Reviewing purchase requisitions and determining the method of purchase;
- (2) Preparing IFPs/RFPs, then analyzing received bids/quotes and required documentation prior to purchasing;
- (3) Assisting in the development of material specifications as required'
- (4) Acting as a commodity specialist by supplying information and literature, arranging personal contacts, and performing other liaison activities;
- (5) Approving purchases from petty cash as described in Section 2.1;
- (6) Accounting for all blank purchase order/requisitions for purchase received and return all approved purchase orders to Administrative Assistant;
- (7) Maintaining on-going inventory of all real property and equipment;
- (8) Conducting physical inventory of equipment, reconciling with records at least bi-annually, and submitting to the General Manager;
- (9) Interviewing salesmen, vendors, and review techniques as a guide to future needs;
- (10) Placing purchase orders for assigned items and complete documentation as required; and
- (11) Providing final approval of procurements up to Two Hundred Fifty Dollars (\$250.00), if money has been designated for the purchase in the departmental budget.

4.6 MAINTENANCE SUPERVISOR/PROCUREMENT MANAGER

The responsibilities and obligations of the Maintenance Supervisors/Procurement Managers, as they pertain to procurement issues, include, but are not limited to the following:

- (1) Preparing annual lists of excess property recommended for disposal, including parts, rolling stock, equipment and real property for submittal to the General Manager;
- (2) Obtaining bids on scrap material;
- (3) Reviewing inventory to establish minimums and maximums;
- (4) Tracing open purchase orders that are beyond required delivery date;
- (5) Reviewing inventory and identifying items for stock replenishment, for excess and for slow moving items for disposal;
- (6) Maintaining inventory of all fuel/fluids storage tanks;
- (7) Requisitioning diesel fuel as needed to maintain adequate supply;

(8) Submitting packing slips (receiving tickets, work orders, or receipts) with open purchase orders to the Administrative Assistant; and

(9) Maintaining storeroom/supplies requisition file.

4.7 CONTRACTING OFFICER (in most cases, Maintenance Supervisor/Procurement Manager acts as Contracting Officer)

The responsibilities and obligations of the Contracting Officers, as they pertain to procurement issues, include, but are not limited to the following:

- (1) Establishing methods and procedures to be utilized in the performance of the contract;
- (2) Mobilizing and directing evaluation committee for each RFP;
- (3) Notifying finalists and arranging oral presentations, as necessary, by contacting the finalists orally via telephone, confirming the same by letter sent via certified mail and issuing internal memorandum to all interested parties;
- (4) Ensuring bids or proposals are evaluated based on the selection criteria noted in the solicitation package;
- (5) Documenting oral presentations, evaluation, and selection;
- (6) Controlling proprietary information;
- (7) Maintaining and securing contract administration files on all contracts;
- (8) Attending bid openings;
- (9) Requesting Buy America waivers from FTA, when necessary;
- (10) Maintaining performance bonds on the current contracts;
- (11) Establishing the initial meeting with selected contractor;
- (12) Forwarding written notification of contract awards;
- (13) Conducting cost or price analyses as required;
- (14) Obtaining necessary documents for rolling stock purchases prior to payment of vendors;
- (15) Obtaining necessary approvals from federal, state, and local governments for any purchases requiring such approvals;
- (16) Ensuring that contractors and their subcontractors perform in accordance with the terms, conditions, and specifications of the contracts;
- (17) Determining the need for final contract audit;
- (18) Assuring contractor's insurance is maintained during the life of the contract;
- (20) Receiving and transmitting all correspondence with contractor regarding contractual matters;
- (21) Providing direction to the contractor on contractual matters;

(22) Coordinating and negotiating all proposed changes with contractors, including obtaining cost quotes, assessing impact of proposed changes, obtaining necessary approvals, and preparing change orders;

(23) Monitoring progress of a payment request to ensure timely payment to contractor;

(24) Reviewing subcontracts submitted by the contractor for compliance with contract requirements when evaluating IFBs/RFPs;

(25) Attending, as required, project progress meetings between contractors and other FWPTC staff;

(26) Recommending and performing contract closeout in accordance with the procedures established herein;
and

(27) Assuming the role of Project Manager, when necessary.

4.8 PROJECT MANAGER

The responsibilities and obligations of the Project Managers, as they pertain to procurement issues, include, but are not limited to the following:

(1) Guiding the contractor throughout the work process;

(2) Providing technical direction to the contractor;

(3) Responding to correspondence on technical matters;

(4) Reviewing progress of the work on a periodic basis and initiating review by FWPTC staff, public agencies and affected utilities;

(5) Initiating request for change orders and providing a cost or price analysis of the proposed change order;

(6) Working with designated construction manager, if any;

(7) Performing tasks assigned by the Contracting Officer;

(8) Reviewing invoices for all contracts as to accuracy and allowability and forwarding to Contracting Officer;
and

(9) Notifying the Contracting Officer when the services/goods requested under the contract is completed/furnished.

4.9 DBE OFFICER

The responsibilities and obligations of DBE Officers, as they pertain to procurement issues, include, but are not limited to the following:

(1) Maintaining current lists of DBE vendors per the Indiana Uniform Certification Program;

(2) Reviewing all IFB/RFP procurements, and determining, in consultation with the Contracting Officer, the DBE goal for each procurement;

(3) Consulting with Department Supervisors or Contracting Officers to determine potential for DBE participation in each procurement;

(4) Assuring that the provisions of FTA C4716.1A and other local, state, and federal regulations are complied with by FWPTC;

(5) Encouraging and investigating ways to achieve the addition of qualified DBEs to FWPTC's vendor participants;

(6) Periodically reviewing and auditing the procurement process to determine if FWPTC complied with its DBE policy;

(7) Attending pre-bid and pre-proposal conferences to assist potential bidders/proposers in identifying DBEs and understanding FWPTC's DBE program;

(8) Offering technical assistance to DBEs in the procurement process; and

(9) Preparing DBE reports and recommending annual DBE goals.

5. RESERVED

6. APPENDIX – FEDERAL CLAUSES

6.1 RESERVED

6.2. APPLICABILITY OF REQUIRED FEDERAL CLAUSES BY CONTRACT TYPE

6.2.1. Micro purchases (below \$2,500) are exempted from the FTA third party contract clause.

6.2.2. Required contract clauses for all non-exempted contracts.

No Government Obligation to Third Parties

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.

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

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et. seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records and Reports

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

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(i), 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.

Federal Changes

49 FR Part 18

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

Civil Rights Requirements

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

1. *Nondiscrimination* - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. *Equal Employment Opportunity* - The following equal employment opportunity requirements apply to the underlying contract:
3. *Race, Color, Creed, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the

course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. *Age* - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 5. *Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
2. 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.

Incorporation of Federal Transit Administration (FTA) Terms

a. **FTA Circular 4220.1E**

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

Energy Conservation Requirements

**42 U.S.C. 6321 et seq.
49 CFR Part 18**

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.

The successful bidder/contractor/supplier agrees to: abide by, perform as required, comply with and include as required all provisions of the Federal Clauses listed above.

Name and Title

Date_____

Signature

6.2.3 Additional Required Clauses for Contracts Exceeding \$10,000

Termination

49 U.S.C. Part 18
FTA Circular 4220.1E

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

- d. **Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. **Termination for Convenience (Professional or Transit Service Contracts)** The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

the convenience of the Recipient.

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

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

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

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

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

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

The successful bidder/contractor/supplier agrees to: abide by, perform as required, comply with and include as required all provisions of the Federal Clauses listed above.

Name and Title

Date _____

Signature

6.2.4 Additional Required for Contracts Exceeding \$25,000.

Government-Wide Debarment and Suspension (Nonprocurement)

49 CFR Part 29 Executive Order 12549

Suspension and Debarment

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

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

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

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

The successful bidder/contractor/supplier agrees to: abide by, perform as required, comply with and include as required all provisions of the Federal Clauses listed above.

Name and Title

Date _____

Signature

6.2 TABLE OF CLAUSES

6.3.1. No Federal Government Obligations to Third-Parties

(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.

6.3.2. Program Fraud and False or Fraudulent Statements and Related Acts

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. §

5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

6.3.3. Access to Records

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

(2) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$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, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

(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).

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

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital	None None unless ¹ non-competitive award	Those imposed on state pass thru Contractor to Contractor	None Yes, if non-competitive award or if funded thru ² 5307/5309/53	None None unless non-competitive award	None None unless non-competitive award	None None unless non-competitive award
Projects <u>II Non State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital	Yes ³ Yes ³	Those imposed on non-state Grantee pass thru Contractor to Contractor	11 Yes Yes	 Yes Yes	 Yes Yes	 Yes Yes

Projects

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

6.3.4. Federal Changes

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

6.3.5. Civil Rights (EEO, Title VI, & ADA)

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

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

6.3.6. Termination Provisions

a. Termination for Convenience (General Provision) The FWPTC 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 FWPTC to be paid the Contractor. If the Contractor has any property in its possession belonging to the FWPTC, the Contractor will account for the same, and dispose of it in the manner the FWPTC 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 FWPTC 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 FWPTC 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 FWPTC, 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 FWPTC 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 FWPTC's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from FWPTC setting forth the nature of said breach or default, FWPTC 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 FWPTC 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 FWPTC elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by FWPTC shall not limit FWPTC'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 FWPTC, 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, FWPTC 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 FWPTC may terminate this contract for default. The FWPTC 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 FWPTC may terminate this contract for default. The FWPTC 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 FWPTC goods, the Contractor shall, upon direction of the FWPTC, protect and preserve the goods until surrendered to FWPTC or its agent. The Contractor and FWPTC 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 FWPTC.

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 FWPTC may terminate this contract for default. The FWPTC shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the FWPTC 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 FWPTC 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 FWPTC 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 FWPTC, acts of another Contractor in the performance of a contract with the FWPTC, epidemics, quarantine restrictions, strikes, freight embargoes; and

(2) the contractor, within [10] days from the beginning of any delay, notifies the FWPTC in writing of the causes of delay. If in the judgment of the FWPTC, the delay is excusable, the time for completing the work shall be extended. The judgment of the FWPTC 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 FWPTC.

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

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 FWPTC.

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

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

6.3.7. Disadvantaged Business Enterprises (DBEs)

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

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

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

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

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

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

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

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

6.3.8. Incorporation of FTA Terms

The preceding and proceeding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any FWPTC requests which would cause FWPTC to be in violation of the FTA terms and conditions.

6.3.9. Suspension/Debarment

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

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

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

6.3.10. Buy America

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

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

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 C.F.R. Part 661.5.

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) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

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

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

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

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

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

6.3.11. Provisions for Resolution of Disputes, Breaches, or Other Litigation

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 FWPTC's General Manager. 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 General Manager. 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 General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

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

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

6.3.12. Lobbying

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. § 1601, *et seq.*]

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

- Language in Lobbying Certification is mandated by 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. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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

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

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

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

6.3.13. Clean Air

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the

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

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

6.3.14. 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.

6.3.15. 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.

6.3.16. Fly America

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

6.3.17. Davis Bacon Act and Copeland Anti-Kickback Act

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit

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

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

CFR part 30.

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

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

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

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

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

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

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

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

6.3.18. Contract Work Hours & Safety Standards Act

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

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

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

liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

6.3.19. Bonding

Bid Bond Requirements (Construction)

(a) Bid Security

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

(b) Rights Reserved

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

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

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

2. The FWPTC 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 FWPTC 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 FWPTC 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 FWPTC's interest.

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

1. FWPTC 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 FWPTC, 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 FWPTC determines that a lesser amount would be adequate for the protection of the FWPTC.

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

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

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 FWPTC shall determine the amount of the patent indemnity to protect the FWPTC.

Warranty of the Work and Maintenance Bonds

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

6.3.20. 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.

6.3.21. Transit Employee Protective Arrangements

(1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for

nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

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

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

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

6.3.22. 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.

6.3.23. 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.

6.3.24. Drug Use Testing and Alcohol Misuse Testing 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 (c) 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).

6.3.25. Patent Rights (N/A)

6.3.26. Rights in Data and Copyrights Requirements (N/A)

6.3.27. 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.

6.3.28. Recycled Products

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.

6.4. FORM NO. 96 (State Board of Accounts) CONTRACTOR'S BID FOR PUBLIC WORKS

https://www.google.com/?gws_rd=ssl#q=state+board+of+accounts+form+96

6.5. Pre-Award and Post-Delivery Vehicle Certification Forms (FTA): Purchaser Requirements, Buy America & FMVSS

PRE-AWARD BUY AMERICA COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart B, **The Fort Wayne Public Transportation Corporation** is satisfied that the buses to be purchased,

_____ (number and description of buses) from

_____ (the manufacturer), meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The recipient , or its appointed analyst _____

_____ (the analyst – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the buses identified by manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the buses, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

Date: _____

Signature: _____ Title: _____

Pre-Award Buy America Exemption Certification

PRE-AWARD BUY AMERICA EXEMPTION CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart B, **The Fort Wayne Public Transportation Corporation** certifies that there is a letter from FTA that grants a waiver to the buses to be purchased,

_____ (number and description of buses), from the Buy America requirements under Section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended.

Date: _____

Signature: _____ Title: _____

Pre-Award Purchaser's Requirements Certification

PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart B, **The Fort Wayne Public Transportation Corporation** certifies that the buses to be purchased, _____ (number and description of buses) from _____ (the manufacturer), are the same product described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce a bus that meets the specifications.

Date: _____

Signature: _____ Title: _____

Pre-Award FMVSS Compliance Certification

PRE-AWARD FMVSS COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart D, **The Fort Wayne Public Transportation Corporation** certifies that it received, at the pre-award stage, a copy of _____'s (the manufacturer) self-certification information stating that the buses, _____ (number and description of buses), will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 of the Code of Federal Regulations, Part 571.

Date: _____

Signature: _____ Title: _____

Pre-Award FMVSS Exemption Certification

PRE-AWARD FMVSS EXEMPTION CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart D, **The Fort Wayne Public Transportation Corporation** certifies that it received at the pre-award stage, a statement from _____'s (the manufacturer) indicating that the buses, _____ (number and description of buses), will not be subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571.

Date: _____

Signature: _____ Title: _____

Post-Delivery Buy America Compliance Certification

POST-DELIVERY BUY AMERICA COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart C, **The Fort Wayne Public Transportation Corporation** certifies that it is satisfied that the buses received, _____ (number and description of buses) from

_____ (the manufacturer), meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The recipient , or its appointed analyst _____

_____ (the analyst – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the actual component and subcomponent parts of the buses identified by the manufacturer, country of origin, and cost; and (2) the actual location of the final assembly point for the buses, including a description of the activities that took place at the final assembly point and the cost of final assembly.

Date: _____

Signature: _____ Title: _____

Post-Delivery Buy America Exemption Certification

POST-DELIVERY BUY AMERICA EXEMPTION CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart C, **The Fort Wayne Public Transportation Corporation** certifies that there is a letter from FTA, which grants a waiver to the buses received,

(manufacturer, number and description of buses), from the Buy America requirements under Section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended.

Date: _____

Signature: _____ Title: _____

Post-Delivery Purchaser's Requirements Certification (More Than Ten Buses or Modified Vans)

POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart C, **The Fort Wayne Public Transportation Corporation** certifies that a resident inspector,

(the resident inspector – not an agent or employee of the manufacturer), was at _____ 's

(the manufacturer) manufacturing site during the period of manufacture of the buses, _____

(number and description of buses). The inspector monitored manufacturing and completed a report on the manufacture of the buses providing accurate records of all bus construction activities. The report addresses how the construction and operation of the buses fulfill the contract specifications. After reviewing the report, visually inspecting the buses, and road testing the buses, the recipient certifies that the buses meet the contract specifications.

Date: _____

Signature: _____ Title: _____

Post-Delivery Purchaser's Requirements Certification (Ten or Fewer Buses or Modified Vans, or any Number of Unmodified Vans)

POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart C, after visually inspecting and road testing the contract buses, **The Fort Wayne Public Transportation Corporation** certifies that the buses,

(number and description of buses) from

_____ (the manufacturer), meet the contract specifications.

Date: _____

Signature: _____ Title: _____

Post-Delivery FMVSS Compliance Certification

POST-DELIVERY FMVSS COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart D, **The Fort Wayne Public Transportation Corporation** certifies that it received, at the post-delivery stage, a copy of _____
's (the manufacturer) self-certification information stating that the buses,
_____ (number and description of buses), comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571.

Date: _____

Signature: _____ Title: _____

Post-Delivery FMVSS Exemption Certification

POST-DELIVERY FMVSS EXEMPTION CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart D, **The Fort Wayne Public Transportation Corporation** certifies that it received, at the post-delivery stage, a statement from _____
's (the manufacturer) indicating that the buses, _____

(number and description of buses), are not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571.

Date: _____

Signature: _____ Title: _____