

GUIDE FOR

OPERATIONS, MANAGEMENT, SUBRECIPIENTS

Below are the applicable clauses that were listed above with suggested or mandatory language. Those clauses with mandatory language are noted.

|  |  |
| --- | --- |
| **Operations/Management/Subrecipients** | |
| **Methods of Procurement** | Micro Purchase: Procurements less than $2,500  Small Purchases: Procurements greater than $2,500 but less than $35,000  Competitive Proposals (Request for Proposals): Procurements greater than $35,000 |
| **Applicable Federal Clauses**  **Excluding micro-purchases, except for construction contracts over $2,000** | |
| **No Government Obligation to Third Parties** | |
| **15. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**  **Applicability to Contracts**  The No Obligation clause applies to all third party contracts that are federally funded.  **Flow Down**  The No Obligation clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.  **Model Clause/Language**  There is no required language for the No Obligations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.  **No Federal Government Obligation to Third Parties.**  The Recipient 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 Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions. | |
| **Program fraud and false or fraudulent statements and related acts** | |
| **18. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**  49 U.S.C. § 5323(l) (1)  31 U.S.C. §§ 3801-3812  18 U.S.C. § 1001  49 C.F.R. part 31  **Applicability to Contracts**  The Program Fraud clause applies to all third party contracts that are federally funded.  **Flow Down**  The Program Fraud clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.  **Model Clause/Language**  There is no required language for the Program Fraud clause. Recipients can draw on the following language for inclusion in their federally funded procurements.  **Program Fraud and False or Fraudulent Statements or Related Acts**  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.  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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.  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** |
| **1. ACCESS TO RECORDS AND REPORTS**  49 U.S.C. § 5325(g)  2 C.F.R. § 200.333  49 C.F.R. part 633  **Applicability to Contracts**  The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49  U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.  **Flow Down**  The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.  **Model Clause/Language**  There is no required language for record keeping and access requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.  **Access to Records and Reports**   1. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records. 2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R.   § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.   1. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required. 2. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required. |
| **Federal Changes** |
| **FEDERAL CHANGES**  49 CFR Part 18  **Applicability to Contracts**  The Federal Changes requirement applies to all contracts.  **Flow Down**  The Federal Changes requirement flows down appropriately to each applicable changed requirement.  **Model Clause/Language**  No specific language is mandated. The following language has been developed by FTA.  **Federal Changes -** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the 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 – Mandatory Language** |
| **8. CIVIL RIGHTS LAWS AND REGULATIONS**  **Applicability to Contracts**  The following Federal Civil Rights laws and regulations apply to all contracts.  1. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to: a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49  U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.  b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.   1. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq*. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex. 2. Nondiscrimination on the Basis of Age. The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 *et seq*., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq*., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age. 3. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42   U.S.C. § 12101 *et seq*., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.  **Flow Down**  The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.  **Model Clause/Language**  Every federally funded contract must include an Equal Opportunity clause. Recipients can draw on the following language for inclusion in their federally funded procurements.  **Civil Rights and Equal Opportunity**  The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.  Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.   1. **Nondiscrimination**. In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. 2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq*., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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. | |

|  |
| --- |
| 1. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq*., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, 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. 2. **Disabilities**. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq*., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq*., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue. |
| **Disadvantaged Business Enterprise (DBE) – contracts awarded on the basis of a bid or proposal offering to**  **use DBEs** |
| **9. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**  49 C.F.R. part 26  **Background and Applicability**  The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding $250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.  FTA recipients must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, recipients are responsible for establishing DBE contract goals on individual DOT-assisted contracts. FTA recipients may use contract goals only on those DOT-assisted contracts that have subcontracting responsibilities. *See* 49 C.F.R. § 26.51(e). Furthermore, while FTA recipients are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith. FTA recipients and third party contractors can obtain information about the DBE program at the following website locations:  Federal Transit Administration website Disadvantaged Business Enterprise page click here Department of Transportation website Disadvantaged Business Enterprise Program click here **Flow Down**  The DBE contracting requirements flow down to all third party contractors and their contracts at every tier. It is the recipient’s and prime contractor’s responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.  **Clause Language**  For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT- assisted prime and subcontracts:  The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:   1. Withholding monthly progress payments; 2. Assessing sanctions; 3. Liquidated damages; and/or 4. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).   Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime  contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in |

|  |
| --- |
| each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient’s written consent; and that, unless the recipient’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).  As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.  **Overview**  It is the policy of the AGENCY and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the AGENCY to:   1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts; 2. Create a level playing field on which DBE’s can compete fairly for DOT-assisted contracts; 3. Ensure that the DBE program is narrowly tailored in accordance with applicable law; 4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE’s; 5. Help remove barriers to the participation of DBEs in DOT assisted contracts; 6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and 7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.   This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The AGENCY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the AGENCY may consider during its review of the Bidder/Offeror’s submission package, the Bidder/Offeror’s documented history of non-compliance with DBE requirements on previous contracts with the AGENCY.  **Contract Assurance**  The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the AGENCY deems appropriate.  **DBE Participation**  For the purpose of this Contract, the AGENCY will accept only DBE’s who are:   1. Certified, at the time of bid opening or proposal evaluation, by the [*certifying agency or the Unified Certification Program (UCP)*]; or 2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or 3. Certified by another agency approved by the AGENCY.   **DBE Participation Goal**  The DBE participation goal for this Contract is set at %. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than** % of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive. **Proposed Submission**  Each Bidder/Offeror, as part of its submission, shall supply the following information:   1. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract. 2. A list of those qualified DBE’s with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the AGENCY. 3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule.** 4. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.   **Good Faith Efforts** |

|  |
| --- |
| If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the AGENCY will consider the Bidder/Offeror’s documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the AGENCY will consider as part of the Bidder/Offeror’s good faith efforts include, but are not limited to, the following:   1. Documented communication with the AGENCY’s DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion); 2. Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Offeror’s of DBE subcontracting opportunities; 3. The Bidder/Offeror’s own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation; 4. Written notification to DBE’s encouraging participation in the proposed Contract; and 5. Efforts made to identify specific portions of the work that might be performed by DBE’s.   The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE’s for elements of the Contract:   1. The names, addresses, and telephone numbers of DBE’s that were contacted; 2. A description of the information provided to targeted DBE’s regarding the specifications and bid proposals for portions of the work; 3. Efforts made to assist DBE’s contacted in obtaining bonding or insurance required by the Bidder or the Authority.   Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.  **Administrative Reconsideration**  Within five (5) business days of being informed by the AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the AGENCY’s [*Contact Name*]. The [*Contact Name*] will forward the Bidder/Offeror’s request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.  As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The AGENCY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.  **Termination of DBE Subcontractor**  The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without the AGENCY’s prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).  **Continued Compliance**  The AGENCY shall monitor the Contractor’s DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that** summarize the total DBE value for this Contract. These reports shall provide the following details:   * DBE utilization established for the Contract; * Total value of expenditures with DBE firms for the quarter; * The value of expenditures with each DBE firm for the quarter by race and gender; |

|  |  |
| --- | --- |
| * Total value of expenditures with DBE firms from inception of the Contract; and * The value of expenditures with each DBE firm from the inception of the Contract by race and gender.   Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the [*Agency Name1*] and [*Agency Name2*]. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.  The successful Bidder/Offeror shall permit:   * The AGENCY to have access to necessary records to examine information as the AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract. * The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract. * All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]   **Sanctions for Violations**  If at any time the AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:   * Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor’s compliance are resolved; and * Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.   **DBE UTILIZATION FORM**  The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):  The Bidder/Offer is committed to a minimum of % DBE utilization on this contract.  The Bidder/Offeror (if unable to meet the DBE goal of %) is committed to a minimum of % DBE utilization on this contract and submits documentation demonstrating good faith efforts.  **DBE PARTICIPATION SCHEDULE**  The Bidder/Offeror shall complete the following information for all DBE’s participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.  **DBE Contact Name and Participation Description Of Race and Gender of IDENTIFICATION Telephone Number Percent (Of Total Work To Be Firm**  **AND INFORMATION Contract Value) Performed FORM Name and**  **Address** | |
|  | **Incorporation of FTA terms (Per FTA C4220.1F) – Mandatory Language** |
| **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**  FTA Circular 4220.1E or subsequent revisions  **Applicability to Contracts**  The incorporation of FTA terms applies to all contracts.  **Flow Down**  The incorporation of FTA terms has unlimited flow down.  **Model Clause/Language**  FTA has developed the following incorporation of terms language**:**  **Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E or subsequent revisions, 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** |
| **11. ENERGY CONSERVATION**  42 U.S.C. 6321 *et seq*.  49 C.F.R. part 622, subpart C  **Applicability to Contracts**  The Energy Policy and Conservation requirements are applicable to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. part 622, subpart C.  **Flow Down**  These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.  **Model Clause/Language**  No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. Recipients can draw on the following language for inclusion in their federally funded procurements.  **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. |
| **Charter Service Operations** |
| **6. CHARTER SERVICE**  49 U.S.C. 5323(d) and (r)  49 C.F.R. part 604  **Applicability to Contracts**  The Charter Bus requirements apply to contracts for operating public transportation service.  **Flow Down Requirements**  The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.  **Model Clause/Language**  The relevant statutes and regulations do not mandate any specific clause or language. Recipients can draw on the following language for inclusion in their federally funded procurements.  **Charter Service**  The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. 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 as permitted under:   1. Federal transit laws, specifically 49 U.S.C. § 5323(d); 2. FTA regulations, “Charter Service,” 49 C.F.R. part 604; 3. Any other federal Charter Service regulations; or 4. Federal guidance, except as FTA determines otherwise in writing.   The contractor agrees that if it engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:   1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA; 2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or 3. Any other appropriate remedy that may apply.   The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services. |

|  |
| --- |
| **School Bus Operations** |
| **22. SCHOOL BUS OPERATIONS**  49 U.S.C. 5323(f)  49 C.F.R. part 605  **Applicability to Contracts**  The School Bus requirements apply to contracts for operating public transportation service.  **Flow Down Requirements**  The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.  **Model Clause/Language**  The relevant statutes and regulations do not mandate any specific clause or language. Recipients can draw on the following language for inclusion in their federally funded procurements.  **School Bus Operations**  The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:   1. Federal transit laws, specifically 49 U.S.C. § 5323(f); 2. FTA regulations, “School Bus Operations,” 49 C.F.R. part 605; 3. Any other Federal School Bus regulations; or 4. Federal guidance, except as FTA determines otherwise in writing.   If Contractor violates this School Bus Agreement, FTA may:   1. Bar the Contractor from receiving Federal assistance for public transportation; or 2. Require the contractor to take such remedial measures as FTA considers appropriate.   When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities. The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services. |
| **ADA Access** |
| FTA is currently working on a contract clause to incorporate appropriate ADA requirements, but it is not yet available. |
| **Applicable Federal Clauses when procurement exceeds $10,000** |
| **Termination Provisions** |
| **25. TERMINATION**  2 C.F.R. § 200.339  2 C.F.R. part 200, Appendix II (B)  **Applicability to Contracts**  All contracts in excess of $10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.  **Flow Down**  For all contracts in excess of $10,000, the Termination clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.  **Model Clause/Language**  There is no required language for the Terminations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.  **Termination for Convenience (General Provision)**  The AGENCY may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the AGENCY’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 AGENCY to be paid the Contractor. If the Contractor has any property in its possession belonging to AGENCY, the Contractor will account for the same, and dispose of it in the manner AGENCY directs.  **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 AGENCY 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 be paid only 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 AGENCY 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 AGENCY, 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.  **Opportunity to Cure (General Provision)**  The AGENCY, 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 AGENCY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from AGENCY setting forth the nature of said breach or default, AGENCY 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 AGENCY from also pursuing all available remedies against Contractor and its sureties for said breach or default.  **Waiver of Remedies for any Breach**  In the event that AGENCY elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by AGENCY shall not limit AGENCY’s remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.  **Termination for Convenience (Professional or Transit Service Contracts)**  The AGENCY, by written notice, may terminate this contract, in whole or in part, when it is in the AGENCY’s interest. If this contract is terminated, the AGENCY shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.  **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 AGENCY may terminate this contract for default. The AGENCY 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 AGENCY.  **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 AGENCY may terminate this contract for default. The AGENCY 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 AGENCY goods, the Contractor shall, upon direction of the AGENCY, protect and preserve the goods until surrendered to the AGENCY or its agent. The Contractor and AGENCY 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 AGENCY.  **Termination for Default (Construction)**  If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure 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 provision of this contract, AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the AGENCY may take over the work and compete 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 AGENCY 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 AGENCY in completing the work.  The Contractor's right to proceed shall not be terminated nor shall the Contractor be 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 AGENCY, acts of another contractor in the performance of a contract with AGENCY, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies AGENCY in writing of the causes of delay. If, in the judgment of AGENCY, the delay is excusable, the time for completing the work shall be extended. The judgment of AGENCY shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 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 AGENCY.   **Termination for Convenience or Default (Architect and Engineering)**  The AGENCY may terminate this contract in whole or in part, for the AGENCY’s convenience or because of the failure of the Contractor to fulfill the contract obligations. The AGENCY 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 AGENCY ‘s Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. AGENCY has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.  If the termination is for the convenience of the AGENCY, the AGENCY’s 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 AGENCY may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the AGENCY.  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 AGENCY. **Termination for Convenience or Default (Cost-Type Contracts)**  The AGENCY 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 AGENCY 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 AGENCY, or property supplied to the Contractor by the AGENCY. If the termination is for default, the AGENCY 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 AGENCY and the parties shall negotiate the termination settlement to be paid the Contractor.  If the termination is for the convenience of AGENCY, 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 AGENCY determines that the Contractor has an excusable reason for not performing, the AGENCY, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience. | |
|  | **Applicable Federal Clauses when procurement exceeds $25,000** |
|  | **Suspension and Debarment** |
| **13. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**  2 C.F.R. part 180  2 C.F.R part 1200  2 C.F.R. § 200.213  2 C.F.R. part 200 Appendix II (I) Executive Order 12549  Executive Order 12689  **Background and Applicability**  A contract award (of any tier) in an amount expected to equal or exceed $25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that  the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or | |

|  |  |
| --- | --- |
| disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.  **Flow Down**  Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and  (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.  **Model Clause/Language**  There is no required language for the Debarment and Suspension clause. Recipients can draw on the following language for inclusion in their federally funded procurements.  **Debarment, Suspension, Ineligibility and Voluntary Exclusion**  The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of $25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:   1. Debarred from participation in any federally assisted Award; 2. Suspended from participation in any federally assisted Award; 3. Proposed for debarment from participation in any federally assisted Award; 4. Declared ineligible to participate in any federally assisted Award; 5. Voluntarily excluded from participation in any federally assisted Award; or 6. Disqualified from participation in ay federally assisted Award.   By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:  The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, 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 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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. | |
|  | **Applicable Federal Clauses when procurement exceeds $100,000** |
|  | **Lobbying –Mandatory Language** |
| **14. LOBBYING RESTRICTIONS**  31 U.S.C. § 1352  2 C.F.R. § 200.450  2 C.F.R. part 200 appendix II (J) 49 C.F.R. part 20  **Applicability to Contracts**  The lobbying requirements apply to all contracts and subcontracts of $100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.  **Flow Down**  The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).  **Model Clause/Language**  49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:  **Lobbying Restrictions**  The undersigned 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions. 3. The undersigned shall require that the language of this certification be included in the award documents for all sub- awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.   This certification is a material representation of fact upon which reliance 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 section 1352, title 31, U.S. Code. 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.  Signature of Contractor's Authorized Official  Name and Title of Contractor's Authorized Official  Date (End of statement)  e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation. |

|  |  |
| --- | --- |
|  | **Contract Work Hours & Safety Standards Act** |
| **10. EMPLOYEE PROTECTIONS**  49 U.S.C. § 5333(a)  40 U.S.C. §§ 3141 – 3148  29 C.F.R. part 5  18 U.S.C. § 874  29 C.F.R. part 3  40 U.S.C. §§3701-3708  29 C.F.R. part 1926  **Applicability to Contracts**  Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:  1. Prevailing Wage Requirements a. Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA’s “Davis-Bacon Related Act”); b. The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and  c. U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.  2. “Anti-Kickback” Prohibitions a. Section 1 of the Copeland “Anti-Kickback” Act, as amended*,* 18 U.S.C. § 874;   1. Section 2 of the Copeland “Anti-Kickback” Act, as amended*,* 40 U.S.C. § 3145; and 2. U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. part 3.   3. Contract Work Hours and Safety Standards a. Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and  b. U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926.  **Flow Down**  These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland “Anti-Kickback” Act apply to all prime construction, alteration or repair contracts in excess of $2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of $100,000 that involve the employment of mechanics or laborers.  **Model Clause/Language**  The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In addition, recipients can draw on the following language for inclusion in their federally funded procurements.  **Prevailing Wage and Anti-Kickback**  For all prime construction, alteration or repair contracts in excess of $2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.  **Contract Work Hours and Safety Standards**  For all contracts in excess of $100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard  work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic | |

|  |  |
| --- | --- |
| rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.  In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.  The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by 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 this section. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.  **Contract Work Hours and Safety Standards for Awards Not Involving Construction**  The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq*., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non- construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.  The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.  Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.  The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers | |
|  | **Applicable Federal Clauses when procurement exceeds $150,000** |
|  | **Provisions for resolution of disputes, breaches, or other litigation** |
| **26. VIOLATION AND BREACH OF CONTRACT**  2 C.F.R. § 200.326  2 C.F.R. part 200, Appendix II (A)  **Applicability to Contracts**  All contracts in excess of the Simplified Acquisition Threshold (currently set at $150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.  **Flow Down**  The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.  **Model Clauses/Language**  FTA does not prescribe the form or content of such provisions. The provisions developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts. Recipients can draw on these examples for inclusion in their federally funded procurements.  **Rights and Remedies of the AGENCY**  The AGENCY shall have the following rights in the event that the AGENCY deems the Contractor guilty of a breach of any  term under the Contract. | |

|  |
| --- |
| 1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors; 2. The right to cancel this Contract as to any or all of the work yet to be performed; 3. The right to specific performance, an injunction or any other appropriate equitable remedy; and 4. The right to money damages.   For purposes of this Contract, breach shall include [AGENCY to define].  **Rights and Remedies of Contractor**  Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the AGENCY, the Contractor expressly agrees that no default, act or omission of the AGENCY shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the AGENCY directs Contractor to do so) or to suspend or abandon performance.  **Remedies**  Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the AGENCY will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the AGENCY takes action contemplated herein, the AGENCY will provide the Contractor with sixty (60) days written notice that the AGENCY considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.  **Disputes**   * **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY’s [title of employee]. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision. * **Example 2:** The AGENCY and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the AGENCY and the Contractor’s organization.   In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.  Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the AGENCY’s direction or decisions made thereof.  **Performance during Dispute**  Unless otherwise directed by AGENCY, 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 its employees, agents or others for whose acts it 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 AGENCY 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 AGENCY 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 AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach  thereunder, except as may be specifically agreed in writing. |

|  |
| --- |
| **Clean Air Act and Federal Water Pollution Control Act** |
| **7. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**  42 U.S.C. §§ 7401 – 7671q  33 U.S.C. §§ 1251-1387  2 C.F.R. part 200, Appendix II (G)  **Applicability to Contracts**  The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding $150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).  **Flow Down**  The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.  **Model Clause/Language**  Recipients can draw on the following language for inclusion in their federally funded procurements. The Contractor agrees:   1. It will not use any violating facilities; 2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;” 3. It will report violations of use of prohibited facilities to FTA; and 4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387). |
| **Applicable Federal Clauses when procurements involve foreign transport or travel**  **by air** |
| **12. FLY AMERICA**  49 U.S.C. § 40118  41 C.F.R. part 301-10  48 C.F.R. part 47.4  **Applicability to Contracts**  The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier’s designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.  **Flow Down Requirements**  The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.  **Model Clause/Language**  The relevant statutes and regulations do not require any specific clause or language that recipients use in their third party contracts. A sample clause is provided for Federal contracts at 48 C.F.R. 52.247-63. Recipients can draw on the following language for inclusion in their federally funded procurements.  FTA proposes the following language, modified from the Federal clause.  **Fly America Requirements**   1. *Definitions.* As used in this clause-- “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. “United States” means the 50 States, the District of Columbia, and outlying areas.   “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.   1. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of   satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or |

|  |
| --- |
| otherwise established for the account of the United States, for international air transportation secured aboard a foreign- flag air carrier if a U.S.-flag air carrier is available to provide such services.   1. If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property. 2. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:   **Statement of Unavailability of U.S.-Flag Air Carriers**  International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:* |
| **Applicable Federal Clauses – Transit Operations funded with Section 5307, 5309,**  **5311, or 5316 funds** |
| **Transit Employee Protective Arrangements** |
| **19. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**  49 U.S.C. § 5333(b) (“13(c)”)  29 C.F.R. part 215  **Applicability to Contracts**  The Public Transportation Employee Protective Arrangements apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.  **Flow Down**  The employee protective arrangements clause flows down to all third party contractors and their contracts at every tier.  **Model Clause/Language**  There is no required language for the Public Transportation Employee Protective Arrangements clause. Recipients can draw on the following language for inclusion in their federally funded procurements.  **Public Transportation Employee Protective Arrangements**  The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):   1. **U.S. DOL Certification**. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract. 2. **Special Warranty**. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract. 3. **Special Arrangements**. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated   herein as required. |
| **Drug and Alcohol Testing** |
| **24. SUBSTANCE ABUSE REQUIREMENTS**  49 U.S.C. § 5331  49 C.F.R. part 655  49 C.F.R. part 40  **Applicability to Contracts**  Third party contractors who perform *safety-sensitive functions* must comply with FTA’s substance abuse management program under 49 C.F.R. part 655, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations.” Under 49 C.F.R. § 655.4, *Safety-sensitive function* means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:   1. Operating a revenue service vehicle, including when not in revenue service; 2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License; 3. Controlling dispatch or movement of a revenue service vehicle; 4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C.   § 5311 and contracts out such services; |

|  |
| --- |
| 5. Carrying a firearm for security purposes.  Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs.”  **Flow Down Requirements**  The Substance Abuse requirements flow down to all third party contractors at every tier who perform a safety-sensitive function for the recipient or subrecipient.  **Model Clause/Language**  FTA's drug and alcohol rules, 49 C.F.R. part 655, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with part 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.  How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.  FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.  **Explanation of Model Contract Clauses Option 1**  The recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 C.F.R. part 655. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option for only those recipients that have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.  **Option 2**  The recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under Option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that, without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.  **Option 3**  The recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why. **SUBSTANCE ABUSE TESTING**  **Option 1**  The Contractor agrees to participate in AGENCY’s drug and alcohol program established in compliance with 49 C.F.R. part 655.  **SUBSTANCE ABUSE TESTING Option 2**  The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 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*.  **SUBSTANCE ABUSE TESTING Option 3** |

|  |
| --- |
| The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 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 C.F.R. part 655; 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]. |
| **Applicable Federal Clauses – Contracts for items designated by EPA, when procuring**  **$10,000 or more per year** |
| **Recycled Products** |
| **20. RECYCLED PRODUCTS**  42 U.S.C. § 6962  40 C.F.R. part 247  2 C.F.R. part § 200.322  **Applicability to Contracts**  The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.*), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000.  **Flow Down**  These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds $10,000.  **Model Clause/Language**  There is no required language for preference for recycled products. Recipients can draw on the following language for inclusion in their federally funded procurements.  **Recovered Materials**  The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA),  “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247. |