

REQUEST FOR PROPOSALS

LEGAL SERVICES

RFP # 21-2118

December 4, 2020

Metropolitan Tulsa Transit Authority
510 South Rockford Avenue
Tulsa, Oklahoma 74120

Table of Contents

A. INTRODUCTION	1
B. INSTRUCTIONS TO PROPOSERS.....	2
1. PROPOSAL FORMAT	2
2. TERMS AND CONDITIONS.....	2
3. DUE DATE	2
4. CONTACT INFORMATION	2
5. BIDDER'S NOTICE OF INTENT TO SUBMIT A PROPOSAL.....	2
6. AMENDMENTS TO THE REQUEST FOR PROPOSALS	2
7. ACCEPTANCE AND REJECTION	3
8. TIME FOR CONSIDERATION	3
9. PAYMENT TERMS	3
10. CONDITION OF GOODS.....	3
11. DEVIATIONS FROM SPECIFICATIONS	3
12. INFORMATION AND DESCRIPTIVE LITERATURE.....	3
13. CONFIDENTIALITY OF PROPOSALS.....	3
14. PRE-PROPOSAL CONFERENCE.....	4
15. PRICING / QUANTITY	4
16. CONFLICTS OF INTEREST.....	4
17. POST AWARD.....	4
18. PROTEST PROCEDURES.....	4
C. SCOPE OF SERVICES AND PROPOSAL SUBMISSION	5
1. INTRODUCTION	5
2. BACKGROUND	5
3. TERM OF AGREEMENT.....	6
4. REQUESTED LEGAL SERVICES.....	6
5. PROPOSAL CONTENT	7
6. PROPOSAL FORMAT	8
7. PROPOSAL EVALUATION	9
8. NOTICE TO PROPOSERS	10
APPENDIX A: REQUIRED FORMS AND CERTIFICATIONS.....	1
ATTACHMENT #1	1
ATTACHMENT #2	2
ATTACHMENT #3	3
ATTACHMENT #4	4
ATTACHMENT #5	5
ATTACHMENT #6	6
ATTACHMENT #7	7
ATTACHMENT #8	8
ATTACHMENT #9	9

ATTACHMENT #10	10
ATTACHMENT #11	11
APPENDIX B: SAMPLE PROPOSAL/PURCHASE AGREEMENT	1
APPENDIX C: FEDERAL CLAUSES	1
1. FLY AMERICA REQUIREMENTS	1
2. BUY AMERICA REQUIREMENTS	1
3. CARGO PREFERENCE REQUIREMENTS	3
4. ENERGY CONSERVATION REQUIREMENTS.....	4
5. CLEAN WATER REQUIREMENTS.....	4
6. LOBBYING	5
7. ACCESS TO RECORDS AND REPORTS	6
8. FEDERAL CHANGES	8
9. CLEAN AIR.....	9
10. RECYCLED PRODUCTS.....	9
11. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.....	10
12. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.....	10
13. TERMINATION	11
14. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT).....	14
15. CIVIL RIGHTS REQUIREMENTS	15
16. BREACHES AND DISPUTE RESOLUTION	16
17. DISADVANTAGED BUSINESS ENTERPRISE(DBE)	17
18. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.....	18
19. SPECIAL NOTIFICATION REQUIREMENTS FOR STATES	19

A. INTRODUCTION

Sealed proposals shall be received by the Metropolitan Tulsa Transit Authority (dba Tulsa Transit), Attention Accounting & Grants Manager, at 510 South Rockford Avenue, Tulsa, Oklahoma at or before **January 14, 2021, 4:30PM Central Standard Time, Friday**, for **Legal Services** as described in this Request For Proposal (RFP) document. Proposals received after the date and time specified above shall be considered late proposals and shall not be considered.

Tulsa Transit intends to make firm selections based on “best value” where price is not the sole determining factor in selecting a firm(s); more than one firm may be selected. Tulsa Transit reserves the right, in its sole and exclusive discretion to accept or to reject any and all proposals, in whole or in part. All proposals shall be subject to all applicable state and federal laws. The award to be let under this solicitation is subject to financial assistance contracts between Tulsa Transit, the Federal Transit Administration, and the State of Oklahoma. Proposal documents shall be clearly marked with the RFP number and shall be mailed or delivered to:

Metropolitan Tulsa Transit Authority
ATTN: Jack Van Hooser
Accounting & Grants Manager
510 S. Rockford Avenue
Tulsa, Oklahoma 74120
Fax: 918-582-5209

The anticipated schedule for selection of a Proposer is as follows:

Request for Proposal Released	December 4, 2020
Advertisement	December 6, 2020 and December 13, 2020
Pre-proposal conference	December 21, 2020
Deadline for Questions Regarding the RFP	December 23, 2020 @ 4:30 p.m.
Response to questions	January 6, 2021
Proposals Due	January 14, 2021 @ 4:30p.m.
Interviews <i>(if deemed necessary)</i>	Week of January 18, 2021
Contract Award <i>(tentative)</i>	January 26, 2021

B. INSTRUCTIONS TO PROPOSERS

1. PROPOSAL FORMAT

Tulsa Transit requires four (4) copies of all documents, one unbound original and three copies. Further, an electronic copy on a CD or jump drive is required. Each must be clearly labeled on the front sheet. Proposals shall be prepared simply and economically on letter sized paper with tabbed or marked sections. Documents can be stapled or assembled with a plastic or wire spine. No three ring binders please. See Section C for more proposal details.

2. TERMS AND CONDITIONS

All proposals are subject to the provisions specified in this RFP, including federal clauses. Terms and conditions included as a part of published price lists, catalogs, and/or other documents submitted as a part of the proposal are waived and will have no effect either on the proposal, or any contract which may be awarded as a result of the proposal. The attachment of any other terms and conditions may be grounds for rejection.

3. DUE DATE

Sealed proposals must be received by Tulsa Transit no later than **4:30 PM Central Standard Time on January 14, 2021.**

4. CONTACT INFORMATION

For questions or additional information, contact the buyer via email: Jack Van Hooser, Accounting & Grants Manager, jvanhooser@tulsatransit.org, or at (918) 560-5609. Include the RFP number on the subject line of all email correspondence.

Proposers are encouraged to contact the Accounting & Grants Manager if there is anything in the specifications that would prevent them from submitting a proposal. Electronic submissions are the preferred method of answering questions, although written submissions via mail or fax will be accepted and must be received no later than **December 23, 2020 @ 4:30 p.m.**

5. BIDDER'S NOTICE OF INTENT TO SUBMIT A PROPOSAL

Email the Accounting & Grants Manager indicating your intent to submit a proposal. Include the RFP number on the subject line of the email. You will receive an email response indicating your notice was received. The same procedure will be followed to request clarification in writing of any point in the RFP. Responses to questions are considered official only when answered in writing in an addendum.

6. AMENDMENTS TO THE REQUEST FOR PROPOSALS

Any amendments to the solicitation will be posted on the Tulsa Transit web site at http://tulsatransit.org/about-Tulsa_Transit/procurements-and-dbe/. In addition, any bidder that has submitted a Notice of Intent to Submit a Proposal via email will be notified of any amendment by email. The bidder will be required to acknowledge the receipt of

all amendments as part of the proposal package.

7. ACCEPTANCE AND REJECTION

Tulsa Transit reserves the right to reject any and all proposals, to waive any informality in proposals, and unless otherwise specified by the offer, to accept any item in the proposal. If either a unit price or extended price is obviously in error or the other price is obviously correct, the incorrect price will be disregarded. Tulsa Transit reserves the right to make partial, progressive or multiple awards where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas, or other factors deemed by Tulsa Transit to be pertinent or peculiar to the purchase in question.

8. TIME FOR CONSIDERATION

The offer shall be valid for a minimum of 150 days from the date of proposal opening.

9. PAYMENT TERMS

Payment terms are Net 30 days after receipt of a correct invoice or acceptance of goods, whichever is later.

10. CONDITION OF GOODS

Unless otherwise indicated in the proposal, it is understood and agreed that any item offered or shipped pursuant to this RFP or resulting contract shall be new.

11. DEVIATIONS FROM SPECIFICATIONS

Any deviation from specifications indicated herein must be clearly stated by the proposer in writing; otherwise, all items offered by proposer shall be deemed to be in strict compliance with these specifications, and the successful proposer will be held responsible thereto. Deviations must be explained in detail by proposer on an attached sheet(s). This paragraph shall not be construed as inviting or permitting any deviation whatsoever by proposer from the stated specifications or implying that any such deviation will be acceptable to Tulsa Transit.

12. INFORMATION AND DESCRIPTIVE LITERATURE

Proposers are to furnish all information requested in the spaces provided on the proposal form. Further, as may be specified elsewhere, each proposer must submit with its proposal descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous proposal does not satisfy this provision.

13. CONFIDENTIALITY OF PROPOSALS

Access to records received by or generated by Tulsa Transit is governed by Oklahoma law. Any information the proposer judges to be proprietary data should be submitted in a separate sealed envelope and clearly marked as proprietary information.

14. PRE-PROPOSAL CONFERENCE

A voluntary pre-proposal conference will be offered via GoToWebinar.

Please register for Pre-proposal Conference Legal Services on Dec 21, 2020 10:00 AM CST at:

<https://attendee.gotowebinar.com/register/667903147273124623>

After registering, you will receive a confirmation email containing information about joining the webinar.

The meeting maybe cancelled if no firms register by December 20, 2020 at 4:30 pm CST.

15. PRICING / QUANTITY

Pricing information is requested per section C below.

16. CONFLICTS OF INTEREST

Proposer must identify any conflicts of interest that exist related to past, present, or planned activities or interests, financial or otherwise, regarding Tulsa Transit or organizations that may be substantially affected by Tulsa Transit activities. In the absence of any known conflict of interest, the proposer shall submit in its proposal a statement that no conflicts of interest exist.

17. POST AWARD

A post-award debriefing is provided to un-successful proposers upon written request. Tulsa Transit shall provide the following information, if applicable:

- The agency's evaluation of the proposer's proposal or bid, including any noted deficiencies or weaknesses.
- The overall evaluation summary, including rating for each evaluation criteria for the debriefed proposer.
- The overall ranking of all offers, when any ranking was developed by the agency during source selection.
- A summary of rationale for award.
- For acquisitions of commercial items, the make and model of the item to be delivered by the successful proposer.

18. PROTEST PROCEDURES

Tulsa Transit has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting Tulsa Transit's procurement officer. Any protest filed by a proposer in connection with the RFP must be submitted in accordance with Tulsa Transit's written procedures.

C. SCOPE OF SERVICES AND PROPOSAL SUBMISSION

1. INTRODUCTION

The Metropolitan Tulsa Transit Authority (Tulsa Transit) is seeking proposals from qualified legal services firms for selecting a firm or firms to provide general counsel and legal services. The types of services, outlined in the following text, include

- (1) Worker's Compensation Claims
- (2) General Liability and Physical Damage Claims
- (3) Labor Relations
- (4) Employee Relations
- (5) General Legal Services, including transit specific areas, such as procurement and interpretation of applicable federal regulations.

Although these are the five main areas Tulsa Transit is seeking assistance, Tulsa Transit may request additional services from the selected firm(s) as needed. Proposers may submit a proposal to perform the legal services required for all five areas noted or any combinations thereof. Tulsa Transit will select the most qualified firm(s) for each of the areas. Further, Tulsa Transit may permit the augmentation of a given firm with subcontractors that may have specialties and skills needed for a given issue.

2. BACKGROUND

The Tulsa Metropolitan Statistical Area is a region with nearly 1 million residents (Census Bureau 2016 estimates). Approximately 520,000 residents live within 3/4 of a mile from the transit routes. The Metropolitan Tulsa Transit Authority (MTTA) provides an array of public transportation options to serve residents in the City of Tulsa, with connecting services to the nearby communities of Broken Arrow, Jenks, and Sand Springs. Services include fixed bus routes, ADA complementary paratransit for people with disabilities, commuter bus service, special event, and the first of two Bus Rapid Transit (BRT) lines set to begin operations in fall 2019 and a second BRT line sometime within the next five years.

To coordinate these services and provide information to the public, Tulsa Transit operates a customer call center, which processes over 400,000 inquiries annually, and two transit stations in downtown and midtown Tulsa. MTTA operates a fleet of 67 large, heavy-duty buses in addition to 42 other vehicles associated with the Lift Program, MTTA's curb-to-curb paratransit service for persons with disabilities who have been determined ADA paratransit eligible.

MTTA provides services seven days a week to almost 8,000 daily fixed route riders and an average of 450 annual daily Lift Program riders. The fixed route service, the fleet is under a set rotation with 51 buses used daily to maintain existing levels of service for 18 local routes, 1 rapid transit route, 1 commuter route, and 6 nightline routes.

Nightline and Sunday services are fixed-route deviation services. Buses run on regular

routes and deviate up to 3/4 mile off the route to pick up or drop off passengers who schedule a deviation in advance.

MTTA and the City of Tulsa just last year initiated the first of two new Bus Rapid Transit (BRT) lines. Finally, in August of 2020, MTTA implemented *GoPass*, a smartphone mobility application that will enable users to buy fares, plan trips, and, in the future, to make intermodal connections to Transportation Network Companies, scooters, and bike share.

Tulsa Transit headquarters and maintenance facility are located at 510 South Rockford Avenue. All Tulsa Transit fixed route owned rolling stock are housed and maintained at this facility. A Call Center for Fixed Route and Lift Vehicles is located at 1403 E. 5th Court, adjacent to the Rockford facility. This building also houses the Lift program operations group. We are currently in the planning stages to design and build a new 100 space employee parking lot near our campus.

Tulsa Transit operates two transit stations: the Denver Avenue Station (DAS) located at 4th and Denver and the Memorial Midtown Station (MMS) located at 33rd and South Memorial Drive. MMS is partially leased to Tulsa Tech.

Tulsa Transit has approximately 185 direct employees of which about 145 are represented by the Amalgamated Transit Union (ATU) local #892. Tulsa Transit also contracts with a private firm to provide Lift, Nightline, and Sunday services. They employ about 65 people many of whom are represented.

Finally, Tulsa Transit annual operating budget is about \$23 million and is mainly derived from the City of Tulsa, the Federal Transit Administration, the Oklahoma Department of Transportation, and passenger fares.

3. TERM OF AGREEMENT

This Professional Services Agreement will be for a term of five (5) years with an additional five (5) year option.

4. REQUESTED LEGAL SERVICES

Worker's Compensation Claims - Tulsa Transit utilizes a Third-Party Administrator (TPA) for its Workers' Compensation insurance and claims. The legal services firm selected to handle the litigation of Tulsa Transit's Workers' Compensation claims would need to work closely and coordinate activities with the TPA and Tulsa Transit to minimize claim expenses and maximize subrogation.

General Liability and Physical Damage - Tulsa Transit is self-insured up to the tort limits under the Governmental Tort Claims Act in the State of Oklahoma for claims arising out of an accident or occurrence. Tulsa Transit also has a General Liability Policy, as well as an Automobile Liability Policy. Tulsa Transit uses a TPA to handle the investigation and day-to-day handling of all claims. The legal services firm selected to perform this function will need to coordinate with both Tulsa Transit and the TPA to minimize claim expenses and maximize subrogation.

Labor Issues - The bus operators and mechanics employed by Tulsa Transit are members

of Amalgamated Transit Union (ATU) Local #892. The legal service firm selected to perform this function will provide direction to Tulsa Transit management on labor related issues, such as responding to grievances and representing Tulsa Transit in arbitrations.

Employment Relations - The legal services firm selected will be responsible for working with Tulsa Transit management in managing personnel issues and providing assistance in labor contract negotiations as necessary.

General Legal Services - In addition to the legal services that are requested in items 1 through 4 above, Tulsa Transit will also consider proposals from qualified firms to perform other general services as follows, but not limited to:

- a. Provide legal assistance to assure Tulsa Transit complies with all applicable agreements, laws, orders, rules, ordinances, and regulations including the drafting of ordinances, legislation, and similar documents for local, state, and federal units of government.
- b. Review and/or draft contracts before execution by Tulsa Transit.
- c. Represent Tulsa Transit in litigation matters when appropriate.
- d. Periodically update the Board of Trustees and/or management on the status of all legal issues.
- e. Advise staff on all local, State, and Federal legal issues that might influence Tulsa Transit.
- f. Attend Board meetings as necessary and perform other duties of a similar nature as may be required.

5. PROPOSAL CONTENT

Proposers must submit adequate information to allow Tulsa Transit to evaluate each of the areas listed below.

Financial Status A certified financial statement reflecting the financial condition of the proposer including a full and detailed presentation of the true condition, as of the most recent fiscal ended, including the proposer's assets, liabilities, and net worth.

Experience and References A statement setting forth a list of all entities, public and private, for which the proposer has performed service similar to the scope of services in this RFP during the past five years, including an identification of the work performed and its current status. This list shall include the current addresses of such entities and current telephone numbers of appropriate contact persons. Tulsa Transit may contact any person listed as a reference. Proposal should also include indication of knowledge of and experience in local, State, Federal laws that regulate the operation of Tulsa Transit, in particular, applicable laws of United States Department of Transportation, Federal Procurement Regulations and Civil Rights legislation including the ADA.. In addition, the Martindale-Hubbell Rating of the firm should be provided.

Firm and Staff Background General background with respect to the law firm and attorneys

with special focus on the area of activity in which representation is sought. The proposal should indicate the size and experience of the firm, the partner/senior shareholder in charge of the area for which representation is sought, and the names of the responsible individuals who will be assigned to serve Tulsa Transit. Resumes must be provided for all individuals identified. The firm shall provide the individual(s) who will be primary point of contact and will have direct involvement with Tulsa Transit staff.

Fee Proposal Proposers should indicate an hourly rate for each area of activity in which representation is sought. The hourly rate quoted shall include all salary and compensation, and all overhead expenses, profits and other employee costs including but not limited to clerical and word processing expenses. Proposers must indicate what costs and expenses they propose to bill in addition to the hourly rate, and the basis for the charges for such expenses, i.e., the basis for any internal reproduction charges, facsimile charges, etc. Tulsa Transit reserves the right at its discretion to request more detailed analysis of the fees beyond the fully loaded hourly rates. No travel costs shall be included as part of the billing, unless otherwise mutually agreed to prior to the travel. In addition, no double billing shall occur – if two or more attorneys are meeting with Tulsa Transit staff – either at Tulsa Transit’s offices, the legal firm’s offices, or at an alternate site - billing for only one attorney shall occur.

Adequacy of Resources and Ability to Respond in a Timely Manner Indicate the primary location from which any Contract resulting from this RFP will be serviced. If proposer will not be servicing Tulsa Transit through a local office, describe in detail how any Contract will be serviced in a timely manner.

6. PROPOSAL FORMAT

Tulsa Transit requires four (4) copies of all documents, one unbound original and three copies. Further, an electronic copy on a CD or jump drive is required. Each must be clearly labeled on the front sheet. Proposals shall be prepared simply and economically on letter sized paper with tabbed or marked sections. Documents can be stapled or assembled with a plastic or wire spine. No three ring binders please.

Proposals shall provide a straightforward, concise delineation of the proposers’ capability to satisfy the requirements of this Request for Proposals (RFP). Proposals shall not exceed 30 pages in length. The proposal page limit is 30 pages. If a Proposer submits a proposal exceeding this limit, Tulsa Transit will consider the pages up to the allowable number and discard all subsequent pages.

The following are excluded from the page count:

- Title Page
- Table of Contents
- Letter of Transmittal
- Tabs or Indices
- Additional lists of references

- Résumé/background information (please restrict to a maximum of three (3) pages per individual)

One page is defined as one side of a single, 8-1/2 x 11" page, with 11-point minimum font size for the substantive text. Any page over this size will be counted as two (2) pages. Any page or partial page with substantive text, tables, graphics, charts, résumés, etc. will be counted as one (1) page. Proposers may use their discretion for the font size of other materials (e.g. graphics, charts).

Each proposal should enable the evaluation committee to make a thorough evaluation and arrive at a sound determination as to whether the proposal will meet Tulsa Transit's requirements. Each technical proposal must be so specific, detailed, and complete as to clearly and fully demonstrate that the Proposer has a thorough knowledge and understanding of the requirements and has valid and practical solutions for technical problems. Statements which paraphrase the requirements or state that "standard procedures will be employed" are inadequate to demonstrate how the Proposer will comply with the requirements of this procurement.

Each proposal must be submitted in the requested format and provide all pertinent information. Each proposal must be signed in ink by a duly authorized officer of the company.

All proposals received become the exclusive property of Tulsa Transit. At such time as a Contract award is recommended to the Tulsa Transit Board of Trustees, all proposals submitted in response to this RFP shall become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are trade secrets as that term is defined in Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY." Tulsa Transit shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of a court. Proposals which indiscriminately identify all or most of their proposal as exempt from disclosure without justification may be found technically unacceptable.

Proposers shall provide a written proposal, which includes the required elements, identified by separate sections or parts, each of which is set forth in this Section. Any proposal that fails to include each of these elements in full is subject to being found technically unacceptable and eliminated from further consideration.

7. PROPOSAL EVALUATION

Tulsa Transit intends to award a contract or contracts to the firm or firms that best satisfy the needs and provides the "best value" to Tulsa Transit. The proposals will be evaluated according to the following criteria.

1. Financial Status (pass/fail)
2. Experience and references
3. Firm and Staff Background

3. Fee Proposal
 4. Adequacy of Resources and Ability to Respond in a Timely Manner
 5. Disadvantage Business Enterprise (DBE) (extra credit consideration)
8. NOTICE TO PROPOSERS
1. Tulsa Transit reserves the right to retain other legal representatives or assistance as might be required for special matters.
 2. Tulsa Transit reserves the right to award a Legal Services Contract to more than one firm.
 3. The successful firm during the term of the agreement shall not represent any client that would be deemed a conflict of interest with respect to Tulsa Transit.
 4. If during the term of this agreement, the successful firm should dissolve; Tulsa Transit retains the right to continue obtaining services from the principle legal professionals presented in the proposal until a new firm can be selected.

APPENDIX A: REQUIRED FORMS AND CERTIFICATIONS

ATTACHMENT #1

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

The Primary Participant _____, certifies to the best of its knowledge and belief, that it an its principles:

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

(If the primary participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

THE PRIMARY PARTICIPANT _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

The undersigned chief legal counsel for the _____ hereby certifies that the _____ has the authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature and Applicant's Attorney

Date

ATTACHMENT #2

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

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

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

THE LOWER-TIER PARTICIPANT _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

The undersigned chief legal counsel for the _____ hereby certifies that the _____ has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Applicant's Attorney

Date

ATTACHMENT #3

AFFIDAVIT
CERTIFICATION OF ELIGIBILITY

"The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of _____ (Name of Firm) as well as the ownership thereof. Further, the undersigned agrees to provide through the prime contractor or, if no prime, directly to the Metropolitan Tulsa Transit Authority, complete and accurate information regarding actual work performed on the project, the payment therefor and any proposed changes, if any, of the foregoing arrangements and to permit the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal and State laws concerning false statements." NOTE: If, after filing this Schedule A and before the work of this firm is completed on the contract covered by this regulation, there is any significant change in the information submitted, you must inform Tulsa Transit of the change through the prime contractor, if no prime contractor, inform Tulsa Transit directly.

Signature

Name

Title
Corporate Seal (where appropriate)

Date

Date

State of

County of

On this _____ day of _____, 20_____, before me appeared _____, to me personally known, who being duly sworn, did execute the foregoing affidavit, and did state that he/she was properly authorized by _____ (Name of firm) to execute the affidavit and did so as his/her free act and deed.

Notary Public

Commission Expires

ATTACHMENT #4

**CERTIFICATION OF
RESTRICTIONS ON LOBBYING**

I, _____, hereby certify on
(name and title of grantee official)

behalf of _____ that:
(name of grantee)

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all 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 is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20____.

By _____
(signature of authorized official)

(title of authorized official)

ATTACHMENT #5

ANTI-COLLUSION AFFIDAVIT

This Proposal will not be considered unless this form has been fully completed and signed by the Proposer or Proposer's Authorized Agent, and notarized, dated and completed by a Notary Public. The following affidavit is submitted by or on behalf of the Proposer as a part of this Proposal:

The undersigned of lawful age, being first duly sworn on oath, says:

The undersigned is the Proposer or the duly authorized agent of the Proposer submitting the Proposal which is attached to this statement, for the purpose of certifying the facts pertaining to the non-existence of collusion among Proposer and between Proposer and City, or Trust officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any Contract Agreement pursuant to the Proposal to which this statement is attached;

The undersigned is fully aware of the facts and circumstances surrounding the making of the Proposal to which this statement is attached and has been personally and directly involved in the proceedings leading to the submission of such Proposal; and

Neither the Proposer nor anyone subject to the Proposer's direction or control has been a party:

- a. to any collusion among Proposer in restraint of freedom of competition by agreement to Proposal at a fixed price, or to refrain from Proposing;
- b. to any collusion with any City, or Trust official, agent, or employee as to quantity, quality or price in the prospective Contract Agreement, or as to any other terms of such prospective Contract Agreement; nor in any discussion between Proposer and any City or Trust official, agent or employee concerning exchange of money or other thing(s) of value for special consideration in the letting of a Contract Agreement.

Name of Individual, Partnership or Corporation

Signature of Proposer or Proposer's Authorized Agent

State of _____ County of _____

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

Notary Public _____

Notary Number _____

My Commission expires _____



ATTACHMENT #6

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(1) The Proposer 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 proposal, the Proposer 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 Proposer 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 Proposer to the extent the Federal Government deems appropriate.

(2) The Proposer 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 Tulsa Transit of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 16 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Proposer, to the extent the Federal Government deems appropriate.

(3) The Proposer 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 Sub-Contractor who will be subject to the provisions.

The Proposer certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Proposer understands and agrees that the provisions of the above regulations and apply to this certification and disclosure, if any.

Company Name

Signature

Title

Date

ATTACHMENT #7

NO GOVERNMENT OBLIGATION 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 Sub-Contractor who will be subject to its provisions.

Company Name

Signature

Title

Date

ATTACHMENT #8

FEDERAL CHANGES
49 CFR Part 18

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.

Company Name

Signature

Title

Date

ATTACHMENT #9

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

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

Company Name

Signature

Title

Date

ATTACHMENT #10

CERTIFICATE OF NON-DISCRIMINATION

In connection with the performance of work under this Contract Agreement, the proposer agrees as follows:

A. The proposer agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin, ancestry or disability. The proposer shall take affirmative action to ensure that employees are treated without regard to their race, creed, color, sex, age, national origin, ancestry or disability, as defined by the Americans with Disabilities Act of 1990, Section 3(2). Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, or pay or other forms of compensation and selection for training, including apprenticeship. The proposer and any Sub-Contractor shall agree to post in a conspicuous place, available to employees and applicants for employment, notices to be provided by the City Clerk of The City of Tulsa setting forth the provisions of this section.

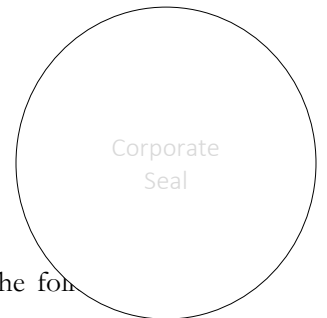
B. In the event of the proposer's non-compliance with this Non-discrimination Clause, the Contract Agreement may be canceled or terminated by the Metropolitan Tulsa Transit Authority (Tulsa Transit) Board of Trustees. The proposer may be declared ineligible by the Board of Trustees for further contracts with Tulsa Transit until satisfactory proof of intent to comply shall be made by the proposer and/or Sub-Contractor(s).

C. The proposer agrees to include the requirements of this Non-Discrimination Certificate in any subcontracts connected with the performance of this Contract Agreement.

I have read the above clause and agree to Proposal by its requirements.

Name of Corporation or Firm

Attest:(Corporate Seal)



Signature of Proposer or Proposer's Authorized Agent

If Proposer's company is not incorporated, no corporate seal is required; however, the following statement must be executed.

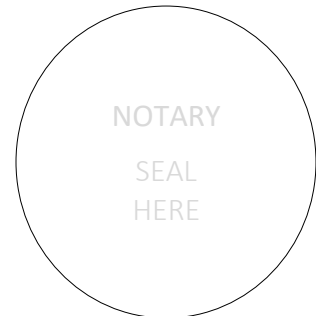
State of _____ County of _____

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

Notary Public _____

Notary Number _____

My Commission Expires _____



ATTACHMENT #11

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:

(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.

Company Name

Signature

Title

Date

APPENDIX B: SAMPLE PROPOSAL/PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT is between the **METROPOLITAN TULSA TRANSIT AUTHORITY**, a public trust located at 510 S. Rockford, Tulsa, Oklahoma, 74120 (“Tulsa Transit”) and:

XYZ and Associates

WITNESSETH:

WHEREAS, the Tulsa Transit has approved certain specifications and advertised for or solicited proposal on the following goods and/or services:

Description of Goods and/or Services: On-Call Legal Services

Issued: [DATE]

WHEREAS, Seller desires to provide such Goods and/or Services to Tulsa Transit and this document constitutes Seller’s offer to provide the Goods and/or Services specified below, and if executed by the Tulsa Transit’s CEO/General Manager or his/her designee as authorized by the Tulsa Transit Board of Trustees will become the Purchase Agreement for such Goods and/or Services.

NOW, THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter set forth, the parties hereto agree as follows:

1. **Purchase and Sale.** Seller agrees to sell Tulsa Transit the Goods and/or Services described in the proposal submitted by Seller at the price and for the quantities stated therein. Payment shall not be made until after delivery of the Goods and/or Services to Tulsa Transit, Tulsa Transit’s acceptance thereof, and Seller’s submission and Tulsa Transit’s approval of a verified claim for the amount due. Tulsa Transit shall not pay any late charges or fees.

2. **Irrevocable Offer.** Seller understands and acknowledges that its signature on this Agreement constitutes an irrevocable firm offer to provide the Goods and/or Services. There is no contract between the parties, however, unless and until Tulsa Transit’s CEO/General Manager or his/her designee as authorized by the Tulsa Transit Board of Trustees signs this Agreement accepting Seller’s Offer. No Tulsa Transit officer, employee or agent except the CEO/General Manager or his/her designee as authorized by the Tulsa Transit Board of Trustees has the authority to award contracts or legally obligate the Tulsa

Transit to any contract. Any Goods and/or Services Seller provides to Tulsa Transit before this Agreement is executed by Tulsa Transit shall be at Seller's risk, and Tulsa Transit shall have no obligation to pay for any such Goods and/or Services provided before this Agreement is executed by Tulsa Transit.

3. Documents Incorporated into the Agreement. In addition to the terms set forth herein, the following described documents, which are attached hereto, are incorporated into the Agreement by reference:

- a. Tulsa Transit Request for Proposals for On Call Legal Services ("RFP") and addendum
- b. Response by XYZ and Associates to RFP ("Response")

In the event of a conflict between the terms set forth herein and the terms in any of the documents described above, the terms set forth herein shall prevail. Terms in the RFP shall prevail over the Response, unless otherwise indicated in Section 3.

4. Term. The term of this agreement shall be effective _____, and shall terminate _____. Tulsa Transit may terminate the Agreement for any reason deemed appropriate by Tulsa Transit by mailing a notice of termination to Seller at least two weeks in advance. Seller understands and acknowledges that any future contracts or renewals are neither automatic nor implied by this Agreement. The continuing purchase by Tulsa Transit of the Goods and/or Services set forth in this Agreement is subject to Tulsa Transit's needs and to Tulsa Transit's annual appropriation of sufficient funds in Tulsa Transit's fiscal year (July 1st to June 30th) in which such Goods and/or Services are purchased. In the event Tulsa Transit does not appropriate or budget sufficient funds to perform this Agreement, this Agreement shall be null and void without further action by Tulsa Transit.

5. Warranties. The Seller agrees that the supplies and/or services furnished under this Purchase Order (i) are of merchandise quality and suitable for their intended use or purpose, (ii) comply with any and all product descriptions or specifications referenced in this Agreement, and (iii) are further covered by a warranty that the products shall be free from defects for either a minimum of one (1) year from the date of acceptance or installation by Tulsa Transit, whichever is later, or for such period beyond one (1) year as the Seller may provide in its offer and (iv) that said services will be performed in a timely, skilled, and proficient manner. The Seller further agrees that the rights and remedies provided herein are in addition to, and do not limit, any rights afforded to Tulsa Transit by any other provision of this Agreement or by law. In no event shall Seller be allowed to disclaim or otherwise limit the warranties set forth herein.

6. Warranty Remedies. Tulsa Transit shall notify Seller if any of the Goods and/or Services fail to meet the warranties set forth above, and Seller shall promptly correct, repair or replace the same at Seller's sole expense. Notwithstanding the foregoing, if such Goods and/or Services shall be determined by Tulsa Transit to be defective or non-conforming within the first thirty (30) days after the date of acceptance by Tulsa Transit, then Tulsa Transit at its option shall be entitled to a complete refund of the purchase price and, in

the case of Goods, shall promptly return such Goods to Seller. Seller shall pay all expenses related to the return of such Goods to Seller.

7. Inspection and Acceptance. Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejections, risk of loss will be on the Seller. Notwithstanding any requirements for inspection and test by Tulsa Transit, the Seller shall perform or have performed the inspections and tests required to substantiate that the supplies, services, and construction provided under this Agreement conform to the drawings, specifications, and other requirements listed herein, including, if applicable the technical requirements for any manufacturers' part number specified herein.

8. No Indemnification by Tulsa Transit. Seller understands and acknowledges that Tulsa Transit is a public trust that is funded with public funds to operate for the benefit of the public. Accordingly, and pursuant to Oklahoma law, Tulsa Transit shall not indemnify nor hold Seller harmless for loss, damage, expense or liability arising from or related to this Agreement, including any attorneys' fees and costs. In addition, Seller shall not limit its liability to Tulsa Transit for actual loss or direct damages for any claim based on a material breach of this Agreement and the documents incorporated herein. Tulsa Transit reserves the right to pursue all legal and equitable remedies to which it may be entitled.

9. Indemnification by Seller. Seller will defend, indemnify and hold harmless Tulsa Transit and all of its board members, officers, employees and agents from and against all liabilities, damages, losses, claims, fines and judgments, including all costs and expenses incidental thereto which may be charged to or incurred by Tulsa Transit or any of its board members, officers, employees or agents by reason of any loss, damage or injury related in any way to this Agreement or arising out of or in connection with any goods, articles or services covered by this Agreement, including but not limited to, claims of patent, trademark and/or copyright infringement.

10. No Insurance by Tulsa Transit. If Tulsa Transit is leasing Goods herein, Tulsa Transit shall not be required to obtain insurance for Seller's property. Seller shall be solely responsible for any insurance it deems necessary. Tulsa Transit is self-insured for its own negligence, subject to the limits of the Governmental Tort Claims Act (51 O.S. § 151 et seq.).

11. Insurance by Seller. Seller warrants that it has adequate workers compensation insurance covering all of its employees in accordance with the requirements of any applicable local, state or federal law. Tulsa Transit may require Seller to obtain other types of insurance in coverages and amounts acceptable to Tulsa Transit if Tulsa Transit determines in its sole and exclusive judgment that such insurance is necessary or expedient.

11. No Confidentiality. Seller understands and acknowledges that Tulsa Transit is subject to the Oklahoma Open Records Act (51 O.S. §24.1 et seq.) and therefore cannot assure the confidentiality of contract terms or other information provided by Seller pursuant to this Agreement that would be inconsistent with Tulsa Transit's compliance with its

statutory requirements thereunder.

12. Non-Responsive Proposals. Seller understands and acknowledges that the addition to and/or modification of any documents contained in Tulsa Transit's Request for Proposal may also result in the rejection of Seller's proposal as non-responsive. Furthermore, if Tulsa Transit accepts Seller's Offer and awards a contract herein, Tulsa Transit shall not be bound to any exceptions, changes or additions made by Seller. Any terms and conditions added by Seller and any modification of the terms set forth herein will be void and of no force and effect.

13. Compliance with Laws. During the performance of this Agreement the Seller agrees that it will afford equal opportunity to all employees and applicants for employment without regard to race, color, religion, sex, disability, or national origin. The Seller agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the Seller's commitment to the requirements of this provision. Seller also shall take the necessary actions to ensure its facilities and employment practices are in compliance with the requirements of the Americans with Disabilities Act. Seller also shall be responsible for complying with any other applicable federal, state, and local laws. Seller is solely responsible for any costs of compliance with any law.

14. Federal, State, and Local Taxes. Tulsa Transit is exempt from state and local sales and use taxes, and any such taxes included on any invoice or voucher received from Seller by Tulsa Transit shall be deducted from the amount of the Seller's invoice or voucher for purposes of payment.

14. Termination. Tulsa Transit, upon written notice, may immediately terminate this Agreement, in whole or in part for any reason. If this Agreement is so terminated, Tulsa Transit shall be liable only for payment for Goods accepted and Services rendered prior to the effective date of termination.

15. Price Changes. The parties understand and agree that the variables in Seller's cost of performance may fluctuate during the term of this Agreement or any renewal of this Agreement. Any change in Seller's cost of performance, however, will not alter Seller's obligations under this Agreement, nor will it excuse performance or delay on Seller's part.

16. Right to Audit. The parties agree that books, records, documents, accounting procedures, practices, price lists or any other items related to the Goods and/or Services provided hereunder are subject to inspection, examination, and copying by Tulsa Transit or its designees. Seller is required to retain all records related to this Agreement for the duration of the contract term and a period of three years following completion and/or termination of the contract. If an audit, litigation or other action involving such records begins before the end of the three year period, the records shall be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later.

17. Severability Provision. If any term or provision herein is determined to be illegal or

unenforceable, the remainder of this Agreement will not be affected thereby. It is the intention of the parties that if any provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible to be legal, valid and enforceable.

18. Governing Law and Venue. This Agreement is executed in and shall be governed by and construed in accordance with the laws of the State of Oklahoma without regard to its choice of law principles, which shall be the forum for any lawsuits arising under this Agreement or incident thereto. The parties stipulate that venue is proper in a court of competent jurisdiction in Tulsa County, Oklahoma and each party waives any

Objection to such venue. Tulsa Transit will not agree to binding arbitration of any disputes.

19. No Waiver. A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other provision, nor shall any failure to enforce any provision hereof operate as a waiver of the enforcement of such provision or any other provision.

20. Relationship of Parties. The relationship of Seller to Tulsa Transit is strictly that of a seller to an arms length purchaser of goods and services. Neither the Seller nor Seller's agents and employees are agents or employees of Tulsa Transit. Furthermore, no agent or employee of Seller shall be construed to be a loaned servant of Tulsa Transit or a jointly employed employee or agent of Seller and Tulsa Transit. Tulsa Transit has no responsibility or right to hire fire or supervise any of Seller's employees and agents.

20. Time is of the Essence. Time and rate of deliveries or performance of services are of the essence of this Agreement. Seller's failure to deliver goods or perform services at the time and rate specified shall be the basis for rejection and default termination by Tulsa Transit.

20. Miscellaneous. If any provision of this Agreement is declared unlawful or unenforceable by any final administrative, legislative or judicial action, this agreement shall be deemed to be amended to conform with the requirements of such action and all other provisions shall remain in full force and effect. This Agreement and any documents incorporated herein constitute the entire agreement of the parties and supersede any and all prior agreements, oral or otherwise. This Agreement may only be modified or amended in writing and signed by both parties. Seller may not assign this Agreement without Tulsa Transit's prior written consent. Seller shall not be entitled to any claim for extras of any kind or nature.

21. Authority of Signatories. The undersigned individual states that s/he has authority to bind Seller to this Agreement that s/he has read and understands the terms of this Agreement, and that Seller agrees to be bound by this Agreement and its incorporated documents and Seller's Offer.

IMPORTANT NOTE: This document must be signed by the proper person as set forth in Instructions, Terms and Conditions for Proposals, paragraph 4.

IN WITNESS WHEREOF, this Agreement has been executed in multiple copies on the dates set forth below to be effective during the period recited above.

Company Name: _____

By: (Sign Here) _____

Printed Name: _____

Title: _____

Date: _____

[Please Print] Company Address City State Zip Code

Telephone Number Fax Number Email Address

METROPOLITAN TULSA TRANSIT AUTHORITY

By: (Sign Here) _____

Printed Name: _____

Title: _____

Date: _____

510 S. Rockford Tulsa, OK 74120

APPROVED:

Attorney: _____

Date: _____

APPENDIX C: FEDERAL CLAUSES

1. FLY AMERICA REQUIREMENTS

49U.S.C. §40118

41 CFR Part 301-10

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down Requirements

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

Model Clause/Language

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

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

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

Applicability to Contracts

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

Flow Down

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

Mandatory Clause/Language

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

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 CFR 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 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

3. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241

46 CFR Part 381

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

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

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. *to use* privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are

available at fair and reasonable rates for United States-Flag commercial vessels; b. *to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)* c. *to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.*

4. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

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

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

5. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$150,000.

Flow Down

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

Model Clause/Language

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

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The

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

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

6. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Mandatory Clause/Language

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

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 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 \$150,000 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 \$150,000)

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 \$150,000 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 \$150,000 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

7. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

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

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

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

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

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(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 \$150,000.
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	Contract	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I. State Grantees	a. Contracts below SAT (\$150,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
	b. Contracts above \$150,000/Capital Projects	None unless ¹ non-competitive award	Those imposed on state pass thru to Contractor	Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
II. Non State Grantees	a. Contracts below SAT (\$150,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
	b. Contracts above \$150,000/Capital Projects	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes

Sources of Authority

1. 49 USC 5325 (a)
2. 49 CFR 633.17
3. 18 CFR 18.36 (i)

8. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-

purchases.

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.

9. CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$150,000.

Model Clauses/Language

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

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

10. RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts

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

year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

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

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

11. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

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

No Obligation by the Federal Government.

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

12. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

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

Program Fraud and False or Fraudulent Statements or Related Acts.

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

13. TERMINATION

49 U.S.C. Part 18

[FTA Circular 4220.1F](#)

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$150,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because

of circumstances beyond the control of the contractor.

Flow Down

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

Model Clause/Language

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

1. **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.
2. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (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.

3. **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.

4. **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.
5. **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.
6. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (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.

7. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (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).

8. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (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 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 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.

9. **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.

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

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

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

14. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29

Executive Order 12549

Background and Applicability

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

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

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded

or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

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

Clause Language

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

Suspension and Debarment

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

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

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

The certification in this clause is a material representation of fact relied upon by **{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.

15. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

1. *Nondiscrimination* - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. *Equal Employment Opportunity* - The following equal employment opportunity requirements apply to the underlying contract:
 1. *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.
 2. *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.
 3. *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.

16. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

[FTA Circular 4220.1F](#)

Applicability to Contracts

All contracts in excess of \$150,000 shall contain provisions or conditions which will allow for administrative,

contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

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

Model Clauses/Language

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

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages 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 (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available 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 (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

17. DISADVANTAGED BUSINESS ENTERPRISE(DBE)

49 CFR Part 26

Background and Applicability

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

subcontractors regardless of whether they are DBE firms or not.

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

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

Clause Language

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

Disadvantaged Business Enterprises

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 1 %. A separate contract goal has not been established for this procurement.
2. 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 **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
3. The prime contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 15 days after the contractor's receipt of payment for that work from MTTA. The prime contractor agrees further to return any retainage payments to those subcontractors within 20 days after the subcontractor's work related to this contract is satisfactorily completed. Should payment not be rendered in a timely manner, MTTA shall hold an informal hearing, where the contractor and subcontractor, meet with representatives from MTTA. After hearing from both parties, a decision will be rendered within five days, detailing the consequences/sanctions, which shall be consistent with the non-compliant issue, which could, if warranted, include termination for default or convenience. The contractor officer shall work with the DBELO and Administrator of Grants and Procurement, and other representatives as necessary. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MTTA. This clause applies to both DBE and non-DBE subcontracts.
4. The contractor must promptly notify MTTA, 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 MTTA.

18. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

[FTA Circular 4220.1F](#)

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

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

19. SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

To the extent required by Federal law, the State agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of Federal assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as applicable, and the amount provided.
