

Appendix A: Federally Required and Other Model Contract Clauses

**Federally Required and Other Model Contract Clauses**  
**Applicability of Third Party Contract Clauses**  
**(Excluding micro-purchases, and exceptions as noted within each clause)**

\* Indicates form to be submitted with bid

1. ACCESS TO RECORDS AND REPORTS
2. BONDING REQUIREMENTS \*
- ~~3. BUS TESTING~~
4. BUY AMERICA REQUIREMENTS \*
5. CARGO PREFERENCE REQUIREMENTS
- ~~6. CHARTER SERVICE~~
7. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT
8. CIVIL RIGHTS LAWS AND REGULATIONS
- 8.5. SPECIAL DOL EEO CLAUSE - Department of Labor, Equal Employment Opportunity
9. DISADVANTAGED BUSINESS ENTERPRISE (DBE) \*
- 9d. PROMPT PAYMENT
10. EMPLOYEE PROTECTIONS
11. ENERGY CONSERVATION
12. FLY AMERICA \*
13. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION \*
14. LOBBYING RESTRICTIONS \*
15. NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES
16. PATENT RIGHTS AND RIGHTS IN DATA
17. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES
18. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS
- ~~19. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS~~
20. RECYCLED PRODUCTS

21. SAFE OPERATION OF MOTOR VEHICLES

~~22. SCHOOL BUS OPERATIONS~~

23. SEISMIC SAFETY

24. SUBSTANCE ABUSE REQUIREMENTS

25. TERMINATION

26. VIOLATION AND BREACH OF CONTRACT

27. CHANGES TO FEDERAL REQUIREMENTS

28. INCORPORATION OF FTA TERMS

29. AMERICANS WITH DISABILITIES ACT (ADA)

30. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

31. DAVIS-BACON ACT AND COPELAND ANTI-KICKBACK ACT

32. VETERANS HIRING PREFERENCE

33. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO  
SURVEILLANCE SERVICES OR EQUIPMENT

34. NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE,  
OR OTHER LEGAL MATTERS

# WORCESTER REGIONAL TRANSIT AUTHORITY

60 Foster Street, Worcester, MA 01608  
Phone: (508) 791-2389 Fax: (508) 752-1676

## **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

*Applies to All Contracts >\$25,000*

2 C.F.R. part 180

2 C.F.R. part 1200

2 C.F.R. § 200.213

2 C.F.R. part 200 Appendix II (I)

Executive Order 12549

Executive Order 12689

## **Debarment, Suspension, Ineligibility and Voluntary Exclusion**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by the WRTA. If it is later determined by the WRTA that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the WRTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

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

\_\_\_\_\_  
Date

# WORCESTER REGIONAL TRANSIT AUTHORITY

60 Foster Street, Worcester, MA 01608  
Phone: (508) 791-2389 Fax: (508) 752-1676

## **LOBBYING RESTRICTIONS**

*Applies to All Contracts >\$100,000*

31 U.S.C. § 1352

2 C.F.R. § 200.450

2 C.F.R. part 200 appendix II (J)

49 C.F.R. part 20

## **Lobbying Restrictions**

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of WRTA, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subWRTAs shall certify and disclose accordingly.

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

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

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

\_\_\_\_\_  
Date

## **WRITTEN PROTEST PROCEDURES**

The following Bid Protest Procedures apply to Federal Transit Administration (FTA) assisted procurements that are competitively solicited. Interested parties must adhere to the following procedures. A protest will be processed in the time frames and structure specified below.

### **A. PRIOR TO OFFER OPENING**

1. Protests concerning a procurement (by a prime contractor or an adversely affected subcontractor) must be in writing and received by WRTA not less than five (5) working days before offer opening unless a different deadline is established in the procurement documents.
2. Upon receipt of that protest, the Administrator will determine if the offer opening should be postponed. If offer opening is postponed, WRTA will notify all prime contractors and subcontractors who have been furnished a copy of the specifications that a protest has been filed and that offer opening is postponed until WRTA has issued its decision. Appropriate addenda will be issued rescheduling offer opening.
3. Any protest to WRTA may be withdrawn at any time before WRTA has issued its decision.
4. WRTA will respond within three (3) working days of receiving the protest, at least generally, to each material issue raised in the Protest. If the matter requires further evaluation, the Administrator will notify the protesting party in writing (by facsimile and U.S. Mail) of the extended review period. The Administrator's decision on any protest will be in writing and is final.

### **B. AFTER OFFER OPENING**

1. Protests received after an offer opening will be considered only if it concerns an issue, procedure, or other matter that could not have been protested by an offeror prior to the opening. The protest must be in writing and be received by WRTA at least three (3) working days before the conditional award of a contract by the WRTA.
2. Upon receipt of the protest, the Administrator will immediately determine if the award of the contract should be postponed. If it is postponed, WRTA will notify all offerors that a protest has been filed and that award of the contract is postponed until WRTA has issued its decision.
3. A protest to WRTA may be withdrawn at any time before WRTA has issued its decision.
4. WRTA will respond within three (3) working days of receiving the protest, at least generally, to each material issue raised in the Protest. If the matter requires further evaluation, the Administrator will notify the protesting party in writing (by facsimile and U.S. Mail) of the extended review period. The Administrator's decision on any protest will be in writing and is final.

### **C. AFTER AWARD**

1. Protests received after an award has been made will be considered only if it concerns an issue, procedure or other matter that could not have been protested by an offeror after the opening. The protest must be in writing and received by the WRTA three (3) working days before the execution of the resulting contract.
2. Upon receipt of the protest, the Administrator will immediately determine if the execution of the contract should be postponed. If it is postponed, WRTA will notify all offerors that a protest has been filed and that execution of the contract is postponed until WRTA has issued its decision.
3. A protest to WRTA may be withdrawn at any time before WRTA has issued its decision.
4. WRTA will respond within three (3) working days of receiving the protest, at least generally, to each material issue raised in the Protest. If the matter requires further evaluation, the Administrator will notify the protesting party in writing (by facsimile and U.S. Mail) of the extended review period. The Administrator's decision on any protest will be in writing and is final.

#### D. APPEALS

1. Except as provided above, there are no further administrative appeals available. In certain circumstances judicial remedies may be available to aggrieved parties.

The WRTA will consider all written protests made within the timelines stated in this policy. Protest submissions should be concise, logically arranged, clearly state the grounds for the protest, and must include at least the following information:

- Name, address, and telephone number of protestor.
- Solicitation or contract name and/or number.
- A detailed statement of the legal and factual grounds for the protest, including copies of all relevant documents or information.
- A statement of relief requested.

Protests are to be filed by certified mail, return receipt requested or by personal deliver by 4:30 pm on or before the due date at:

Administrator  
Worcester Regional Transit Authority  
60 Foster Street  
Worcester, MA 01608

If protests are filed by personal delivery, the protestor must obtain a time-stamped copy of the protest from the WRTA's Administration Office as proof of the date and time of the filing of the protest. It is the Protester's sole responsibility to provide said copy at the time of filing.

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

*Applies to All Procurement Types*

49 U.S.C. § 5325(g)

2 C.F.R. § 200.333

49 C.F.R. part 633

### **Access to Records and Reports**

**a. Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

**b. Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

**c. Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

**d. Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

## **2. BONDING REQUIREMENTS \***

*Applies to Construction Procurements > \$100,000*

2 C.F.R. § 200.325

31 C.F.R. part 223

\* See bid package for bonding forms and requirements.

### **Bond Requirements**

#### **Bid Guarantee**

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the Worcester Redevelopment Authority (WRA). The amount of such guaranty shall be equal to            or        % of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the WRA reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of the WRA.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid

within [90] days after the bid opening without the written consent of the WRA, or refuse or be unable



to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent WRA'S damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense WRA for the damages occasioned by default, then the undersigned bidder agrees to indemnify WRA and pay over to WRA the difference between the bid guarantee and WRA'S total damages so as to make WRA whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

### **Performance Guarantee**

A Performance Guarantee in the amount of \_\_\_\_\_% of the Contract value is required by the WRA to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the WRA within ten (10) business days from Contract execution. The WRA requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the WRA and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. WRA may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The WRA may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

~~If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the WRA if:~~

- ~~1. A bank in good standing issues it. The WRA will not accept a Letter of Credit from an entity other than a bank.~~
- ~~2. It is in writing and signed by the issuing bank.~~
- ~~3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.~~
- ~~4. The WRA is identified as the Beneficiary.~~
- ~~5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.~~

~~6. The effective date of the Letter of Credit is the same as the effective date of the Contract~~

~~7. The expiration date of the Letter of Credit coincides with the term of this Agreement.~~

~~8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the WRA and the Contractor the work stipulated herein.~~

~~The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft (similar to the attached forms contained in Sections X and Y) to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.~~

### **Payment Bonds**

A Labor and Materials Payment Bond equal to \_\_\_\_\_% of the contract value must be furnished by the contractor to WRA as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (WRA) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

\* See WRA form for certification to be included with Bid.

### **Sample Bond Certifications**

#### **Performance Guarantee Certification**

~~The undersigned hereby certifies that the Bidder shall provide a Performance Guarantee in accordance with the Specifications.~~

~~Designate below which form of Performance Guarantee shall be provided:~~

\_\_\_\_\_  
\_\_\_\_\_  
**Performance Bond**

\_\_\_\_\_  
\_\_\_\_\_  
**Irrevocable Stand By Letter of Credit**

**BIDDER'S NAME:** \_\_\_\_\_  
\_\_\_\_\_

**AUTHORIZED SIGNATURE:** \_\_\_\_\_  
\_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

~~\* See WRA form for certification to be included with Bid.~~

**Performance Bond**

**KNOW ALL MEN BY THESE PRESENTS:** that \_\_\_\_\_  
(Insert full name and address and legal title of Contractor) as Principal, hereinafter called Contractor,  
\_\_\_\_\_ and (Insert full name  
and address or legal title of Surety) as Surety, hereinafter called Surety, are held and firmly bound unto  
WRA as Obligee, hereinafter called Authority, in the amount of Dollars \_\_\_\_\_ (\$) for the  
payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated, 20\_\_\_\_, entered into a contract with the WRA  
for Contract No. \_\_\_\_\_, which contract is by reference made a part hereof, and is  
hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and  
faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in  
full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the WRA. Whenever

Contractor shall be, and is declared by the WRA to be in default under the Contract, the  
WRA having performed WRA'S obligations thereunder, the Surety may promptly remedy the default, or  
shall promptly

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and  
upon determination by Surety of the lowest responsible bidder, or, if the WRA elects, upon  
determination by the WRA and the Surety jointly of the lowest responsible bidder, arrange for a  
contract between such bidder and the Authority, and make available as Work progresses (even though  
there should be a default or a succession of defaults under the contract or contracts of completion  
arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the  
contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance  
of the contract price," as used in this paragraph, shall mean the total amount payable by the WRA to  
Contractor under the Contract and any amendments thereto, less the amount properly paid by the  
WRA to Contractor.

~~Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.~~

~~No right of action shall accrue on this bond to or for the use of any person or corporation other than the WRA or the heirs, executors, administrators or successors of the WRA.~~

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS \_\_\_\_\_ PRINCIPAL \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (SEAL)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Title)

WITNESS \_\_\_\_\_ SURETY \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (SEAL)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Title)

~~Attach hereto proof of authority of officers or agents to sign bond.~~

**~~Irrevocable Stand-By Letter Of Credit Certificate~~**

The undersigned states that he/she is of the \_\_\_\_\_ of the

(Title)

\_\_\_\_\_  
\_\_\_\_\_  
(The "Beneficiary") and hereby

(Name of Beneficiary)

Certifies on behalf of the Beneficiary to \_\_\_\_\_ (the "Bank"), with

(Name of Issuing Bank)

Reference to Irrevocable Standby Letter of Credit No. \_\_\_\_\_ Issued by the  
Bank (the "Letter of Credit"), that:

1. The undersigned is duly authorized to execute and deliver this certificate on behalf of the Beneficiary.

2. The Beneficiary is making a drawing under the Letter of Credit.

3. An Event of Default has occurred under Contract No. \_\_\_\_\_.

4. The amount of the draft presented with this certificate does not exceed the total maximum amount  
drawable today under the Letter of Credit as provided therein.

, this certificate is executed this day of \_\_\_\_\_, 20\_\_\_\_.

(NAME OF BENEFICIARY)

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Bank Draft**

**FOR VALUE RECEIVED**

Pay on presentment to \_\_\_\_\_ the sum of \_\_\_\_\_

(Name of Beneficiary) \_\_\_\_\_ Dollars (\$)

Charge the Account of \_\_\_\_\_ Irrevocably Standby Letter of

(Name of Issuing Bank)

Credit No. \_\_\_\_\_ Dated: 20\_\_\_\_.

To \_\_\_\_\_

(Name of Issuing Bank)

**NAME OF BENEFICIARY**

By \_\_\_\_\_

Its \_\_\_\_\_

### **3. BUS TESTING**

49 U.S.C. § 5318(e)  
49 C.F.R. part 665

#### **Bus Testing**

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or A-15 components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the WRA.

### **4. BUY AMERICA REQUIREMENTS \***

*Applies to Rolling Stock, Construction, Materials & Supplies Contracts >\$150,000*

49 U.S.C. 5323(j)  
49 C.F.R. part 661

#### **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 all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The [bidder or offeror] must submit to [WRA] the appropriate Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

***In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.***

#### *Certificate of Compliance with Buy America Requirements*

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

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

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

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

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

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

*Certificate of Non-Compliance with Buy America Requirements*

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

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

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

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

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

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

***In accordance with 49 C.F.R. § 661.12, for the procurement of rolling stock (including train control, communication, and traction power equipment) use the following certifications:***

*Certificate of Compliance with Buy America Rolling Stock Requirements*

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

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

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

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

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

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

*Certificate of Non-Compliance with Buy America Rolling Stock Requirements*

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

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

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

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

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



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

## **5. CARGO PREFERENCE REQUIREMENTS**

*Applies to Rolling Stock, Construction, Material & Supplies that may be transported by ocean vessel.*

46 U.S.C. § 55305

46 C.F.R. part 381

### **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 loading 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, WRTA, & WRA (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## **6. CHARTER SERVICE**

*Applies to All Operations/Management/Subrecipients contracts*

49 U.S.C. 5323(d) and (r)

49 C.F.R. part 604

### **Charter Service**

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that WRTAs and subWRTAs of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- 1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
- 2. FTA regulations, "Charter Service," 49 C.F.R. part 604;
- 3. Any other federal Charter Service regulations; or
- 4. Federal guidance, except as FTA determines otherwise in writing.

~~The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:~~

- ~~1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;~~
- ~~2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or~~
- ~~3. Any other appropriate remedy that may apply.~~

~~The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.~~

## **7. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

*Applies to All Procurement Types >\$150,000*

42 U.S.C. §§ 7401 – 7671q

33 U.S.C. §§ 1251-1387

2 C.F.R. part 200, Appendix II (G)

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

## **8. CIVIL RIGHTS LAWS AND REGULATIONS**

*Applies to All Procurement Types*

Civil Rights and Equal Opportunity

The WRA is an Equal Opportunity Employer. As such, the WRA agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the WRA agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**5. Special DOL EEO Clause – Applies to construction contracts > \$10,000;**

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals

based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

**9. DISADVANTAGED BUSINESS ENTERPRISE (DBE) \***

*Applies to All Procurement Types*

49 C.F.R. part 26

\* **See WRA forms to be included with Bid.**

The following contract clause is required in all DOT-assisted prime and subcontracts:

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. **The WRTA's overall goal for DBE participation is 1.22%.**

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

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. **PROMPT PAYMENT** - The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the WRA. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

e. The contractor must promptly notify the WRA, 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 the WRA.

### **Additional information for contracts with Contract Goals**

#### **Overview**

It is the policy of the WRA and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the WRA to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE’s can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE’s;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The WRA shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the WRA may consider during its review of the Bidder/Offeror’s submission package, the Bidder/Offeror’s documented history of non-compliance with DBE requirements on previous contracts with the WRA.

#### **Contract Assurance**

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the WRA deems appropriate.

#### **DBE Participation**

For the purpose of this Contract, the WRA will accept only DBE’s who are:

1. Certified, at the time of bid opening or proposal evaluation, by the MassDOT Unified Certification Program (UCP).

### **DBE Participation Goal**

The DBE participation goal for this Contract is set at \_\_\_\_%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than** \_\_\_\_% of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive.

### **Proposed Submission**

#### **Each Bidder/Offeror, as part of its submission, shall supply the following information:**

1. A completed DBE Utilization Form (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the WRA.
3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
4. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification

### **Good Faith Efforts**

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the WRA will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the WRA will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the WRA's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the WRA generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;

3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

#### **Administrative Reconsideration**

Within five (5) business days of being informed by the WRA that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the WRA's DBELO/CFO. The DBELO/CFO will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The WRA will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate A-34 good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

### **Termination of DBE Subcontractor**

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without the WRA's prior written consent. The WRA may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the WRA in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

### **Continued Compliance**

The WRA shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the WRA** that summarize the total DBE value for this Contract.

These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the Worcester Redevelopment Authority and the Worcester Regional Transit Authority. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The WRA to have access to necessary records to examine information as the WRA deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.



- The authorized representative(s) of the WRA, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be submitted with Certified Payroll and maintained by the Contractor for monthly review with draft application for payment at the project meeting.

#### **Sanctions for Violations**

If at any time the WRA has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the WRA may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

#### **DBE UTILIZATION FORM**

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_\_\_ The Bidder/Offer is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract.

\_\_\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of %) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts

#### **DBE PARTICIPATION SCHEDULE**

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

#### **DBE IDENTIFICATION AND INFORMATION FORM**

Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description Of Work To Be Performed	Performed Race and Gender of Firm


#### **10. EMPLOYEE PROTECTIONS**

*Applicability – See each section*

49 U.S.C. § 5333(a)

40 U.S.C. §§ 3141 – 3148

29 C.F.R. part 5

18 U.S.C. § 874

29 C.F.R. part 3

40 U.S.C. §§3701-3708

29 C.F.R. part 1926

#### **Prevailing Wage and Anti-Kickback**

*Applies to Construction Contracts >\$2,000*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

#### **Contract Work Hours and Safety Standards**

*Applies to Operations/Management/Subrecipients, Rolling Stock, Construction Contracts >\$100,000*

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40

U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

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

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

#### **Contract Work Hours and Safety Standards for Awards Not Involving Construction**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

#### **11. ENERGY CONSERVATION**

*Applies to All Procurements*

42 U.S.C. 6321 et seq.

49 C.F.R. part 622, subpart C

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.

#### **12. FLY AMERICA \***

*Applies to All Procurements involving foreign transport or travel by air*

49 U.S.C. § 40118

41 C.F.R. part 301-10

48 C.F.R. part 47.4

#### **Fly America Requirements**

a) Definitions. As used in this clause—

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, the WRA, and others to use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

**Statement of Unavailability of U.S.-Flag Air Carriers**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]: \_\_\_\_\_

*(End of statement)*

e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

*(End of Clause)*

**13. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION \***

*Applies to All Contracts >\$25,000*

2 C.F.R. part 180

2 C.F.R. part 1200

2 C.F.R. § 200.213

2 C.F.R. part 200 Appendix II (I)

Executive Order 12549

Executive Order 12689

\* **See WRA form for certification to be included with Bid.**

**Debarment, Suspension, Ineligibility and Voluntary Exclusion**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;

e) Voluntarily excluded from participation in any federally assisted Award; or

f) Disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by the WRA. If it is later determined by the WRA that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the WRA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**14. LOBBYING RESTRICTIONS \***

*Applies to All Contracts >\$100,000*

31 U.S.C. § 1352

2 C.F.R. § 200.450

2 C.F.R. part 200 appendix II (J)

49 C.F.R. part 20

**Lobbying Restrictions**

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

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

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

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

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

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

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

\_\_\_\_\_ Date

## **15. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

*Applies to All Contracts*

The WRA 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 WRA, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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

*Applies to Professions Services/A&E – Research & Development*

2 C.F.R. part 200, Appendix II (F)

37 C.F.R. part 401

Intellectual Property Rights This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the FTA intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.



a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

## **17. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES**

*Applies to All Rolling Stock Purchases*

49 U.S.C. 5323(m)

49 C.F.R. part 663

### **Pre-Award and Post-Delivery Audit Requirements**

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

## **18. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

*Applies to All Procurements*

49 U.S.C. § 5323(l) (1)

31 U.S.C. §§ 3801-3812

18 U.S.C. § 1001

49 C.F.R. part 31

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

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

## **19. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**

*Applies to Transit Operations funded with Section 5307, 5309, 531 or 5316 funds*

*49 U.S.C. § 5333(b) ("13(c)")*

*29 C.F.R. part 215*

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. **~~U.S. DOL Certification.~~** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.

2. **~~Special Warranty.~~** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

3. **~~Special Arrangements.~~** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

## **20. RECYCLED PRODUCTS**

*Applies to Operations/Management/Subrecipients; Rolling Stock; Construction Procurements - EPA  
Selected Items >\$10,000 Annually*

*42 U.S.C. § 6962*

*40 C.F.R. part 247*

*2 C.F.R. part § 200.322*

Recovered Materials the Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

## **21. SAFE OPERATION OF MOTOR VEHICLES**

*23 U.S.C. part 402*

*Executive Order No. 13043*

*Executive Order No. 13513*

*U.S. DOT Order No. 3902.10*

**Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- A-60 rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or WRA.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

## **22. SCHOOL BUS OPERATIONS**

*Operations/Management/Subrecipients – All Contracts*

~~49 U.S.C. 5323(f)~~

~~49 C.F.R. part 605~~

~~The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:~~

- ~~1. Federal transit laws, specifically 49 U.S.C. § 5323(f);~~
- ~~2. FTA regulations, “School Bus Operations,” 49 C.F.R. part 605;~~
- ~~3. Any other Federal School Bus regulations; or~~
- ~~4. Federal guidance, except as FTA determines otherwise in writing.~~

~~If Contractor violates this School Bus Agreement, FTA may:~~

- ~~1. Bar the Contractor from receiving Federal assistance for public transportation; or~~
- ~~2. Require the contractor to take such remedial measures as FTA considers appropriate.~~

~~When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.~~

~~The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.~~

## **23. SEISMIC SAFETY**

*Professional Services - A&E & Construction for new buildings & additions*

~~42 U.S.C. 7701 et seq.~~

~~49 C.F.R. part 41~~

~~Executive Order (E.O.) 12699~~

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

#### **24. SUBSTANCE ABUSE REQUIREMENTS**

~~Operations/Management/Subrecipients Transit Operations funded with Section 5307, 5309, 5311 funds~~

~~49 U.S.C. § 5331~~

~~49 C.F.R. part 655~~

~~49 C.F.R. part 40~~

#### **SUBSTANCE ABUSE TESTING**

~~The Contractor agrees to participate in WRTA's drug and alcohol program established in compliance with 49 C.F.R. part 655.~~

#### **25. TERMINATION**

*Applies to all contracts >\$10,000 if 49 CFR part 18 applies*

*2 C.F.R. § 200.339*

*2 C.F.R. part 200, Appendix II (B)*

#### **Termination for Convenience (General Provision)**

The WRA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the WRA'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 WRA to be paid the Contractor. If the Contractor has any property in its possession belonging to WRA, the Contractor will account for the same, and dispose of it in the manner WRA directs.

#### **Termination for Default [Breach or Cause] (General Provision)**

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the WRA may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the WRA 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 WRA, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

#### **Opportunity to Cure (General Provision)**

The WRA, 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 WRA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from WRA setting forth the nature of said breach or default, WRA 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 WRA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

#### **Waiver of Remedies for any Breach**

In the event that WRA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by WRA shall not limit WRA's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

#### **Termination for Convenience (Professional or Transit Service Contracts)**

The WRA, by written notice, may terminate this contract, in whole or in part, when it is in the WRA's interest. If this contract is terminated, the WRA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

#### **Termination for Default (Supplies and Service)**

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the WRA may terminate this contract for default. The WRA 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 WRA.

#### **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 WRA may terminate this contract for default. The WRA 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 WRA goods, the Contractor shall, upon direction of the WRA, protect and preserve the goods until surrendered to the WRA or its agent. The Contractor and WRA 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 WRA.

#### **Termination for Default (Construction)**

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, WRA may terminate this contract for default. The WRA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the WRA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the WRA 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 WRA in completing the work.

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of WRA, acts of another contractor in the performance of a contract with WRA, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies WRA in writing of the causes of delay. If, in the judgment of WRA, the delay is excusable, the time for completing the work shall be extended. The judgment of WRA shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

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

#### **Termination for Convenience or Default (Architect and Engineering)**

The WRA may terminate this contract in whole or in part, for the WRA's convenience or because of the failure of the Contractor to fulfill the contract obligations. The WRA 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 WRA's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. WRA has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

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

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

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 WRA.

#### **Termination for Convenience or Default (Cost-Type Contracts)**

The WRA 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 WRA 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 WRA, or property supplied to the Contractor by the WRA. If the termination is for default, the WRA 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 WRA and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of WRA, 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 WRA determines that the Contractor has an excusable reason for not performing, the WRA, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

## **26. VIOLATION AND BREACH OF CONTRACT**

*Applies to all Contracts >\$100,000*

2 C.F.R. § 200.326

2 C.F.R. part 200, Appendix II (A)

### **Rights and Remedies of the WRA**

The WRA shall have the following rights in the event that the WRA deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

### **Rights and Remedies of Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the WRA, the Contractor expressly agrees that no default, act or omission of the WRA shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the WRA directs Contractor to do so) or to suspend or abandon performance.

### **Remedies**

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the WRA will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the WRA takes action contemplated herein, the WRA will provide the Contractor with sixty (60) days written notice that the WRA considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

## **Disputes**

- **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of WRA. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the WRA shall be binding upon the Contractor and the Contractor shall abide by the decision.

- **Example 2:** The WRA and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the WRA and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the WRA's direction or decisions made thereof.

## **Performance during Dispute**

Unless otherwise directed by WRA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

## **Claims for Damages**

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

## **Remedies**

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the WRA 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 WRA 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 WRA 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.

### **27. FEDERAL CHANGES**

*Applies to all Contracts*

49 CFR Part 18

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

### **28. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

*Applies to all Contracts*

**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 of the WRA requests which would cause the WRA to be in violation of the FTA terms and conditions.

### **29. AMERICANS WITH DISABILITIES ACT (ADA)**

*Applies to All A&E; Operations/Management/Subrecipients; Rolling Stock; Construction Contracts*

**ADA Access** - This requirement applies to contracts for Architectural and Engineering Services. The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of

1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

### **30. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

ITS projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

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

*Applies to Construction Contracts Valued over \$2,000*

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

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

the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the

benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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

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

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

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

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

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

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

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

this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The Worcester Regional Transit Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Worcester Regional Transit Authority may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Worcester Regional Transit Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the

submission of copies of payrolls by all subcontractors.

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

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

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

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

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

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

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

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



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

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment

and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

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

U.S.C. 1001.

**32. VETERANS HIRING PREFERENCE**  
**49 U.S.C. 5325(k) et seq.**

**Veterans Employment** – WRTA and sub-recipients (WRA) of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**33. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE**  
**SERVICES OR EQUIPMENT**  
**2 CFR 200.216**  
**Applicable to: All contracts**

The contractor is prohibited from obligating or expending federal funds to:

1. Procure or obtain
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, “covered telecommunications equipment or services” is:
  - a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)
  - b. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - c. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Contractor shall not provide covered telecommunications equipment or services in the performance of this contract.

**34. NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

**FTA Master Agreement §39(b)  
Applicable to: Contracts in excess of \$25,000.**

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the Worcester Redevelopment Authority (WRA), which will promptly notify the WRTA and FTA Chief Counsel and FTA Regional Counsel for the Region in which the WRTA is located. The Contractor must include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

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

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

**Additional Notice to U.S. DOT Inspector General.** The Contractor must promptly notify the WRA, which will promptly notify the WRTA and U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the WRTA is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement with the WRA involving a principal, officer, employee, agent, or Third

Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.



### **Inclusionary Policy Guidance**

All projects contracted with the Worcester Redevelopment Authority are subject to the Responsible Employer & Inclusionary Participation Policy (REIPP). Further, all projects funded by the Federal Transportation Administration must meet participation goals for Disadvantaged Business Enterprises (DBE). Both programs were referenced in the bid request for this project.

*The following documents are required to be submitted:*

- DBE Participation Schedule
- DBE Utilization Form
- DBE Letter of Intent
- DBE Affidavit

*The following templates are provided for your use and submission with each requisition:*

- Certified Payroll Form
- WRA Monthly Compliance Report

The undersigned acknowledges receipt of this document and all associated forms:

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**Name of Bidder**

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**Signature / Title**

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**Date**

DBE COMPLIANCE – FORM 1 – DBE PARTICIPATION SCHEDULE

**DBE Participation Schedule**

<b>BID:</b>	<b>NAME OF BIDDER:</b>
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The undersigned Bidder/Offeror provides the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form:

**DBE Identification and Information Form**

Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description Of Work To Be Performed	Performed Race and Gender of Firm

\_\_\_\_\_  
**Name of Bidder**

\_\_\_\_\_  
**Signature / Title**

\_\_\_\_\_  
**Date**

**DBE Utilization Form**

<b>BID:</b>	<b>NAME OF BIDDER:</b>
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The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_ The Bidder/Offer is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract.

\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of %) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

\_\_\_\_\_  
**Name of Bidder**

\_\_\_\_\_  
**Signature / Title**

\_\_\_\_\_  
**Date**

**LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR**

<b>BID:</b>	<b>NAME OF BIDDER:</b>
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The undersigned intends to perform work in connection with the above contract upon execution of the bid and subsequent award of contract by the Worcester Redevelopment Authority as:

Name of MBE/WBE/DBE Subcontractor \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Please check all that apply:

Minority Business Enterprise (MBE) \_\_\_\_\_

Women Business Enterprise (WBE) \_\_\_\_\_

Disadvantaged Business Enterprise (DBE) \_\_\_\_\_

The MBE /WBE /DBE status of the above named subcontractor is certified by the Commonwealth of Massachusetts Supplier diversity Office Certification Program, or for DBE the Massachusetts Department of Transportation Unified Certification program (UPC). The above named subcontractor is prepared to perform the work described in Bid # \_\_\_\_\_ Section # \_\_\_\_\_ in connection with the above contract upon execution of the bid and subsequent award of contract by the Worcester Redevelopment Authority. The above named subcontractor is prepared to perform the described work at the estimated Commitment Total below.

Commitment Total:

Amount \$ \_\_\_\_\_

This document shall not serve in any manner as an actual subcontract between the two parties. A separate subcontractor agreement will describe in detail the contractual obligations of the bidder and the MBE/WBE/DBE subcontractor.

**Affirmation**

The above named MBE/ WBE/ DBE subcontractor affirms that it will perform the portion(s) of the contract for the estimated dollar value as stated above.

\_\_\_\_\_  
Name of MBE/ WBE/ DBE Subcontractor

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Signature / Title

\_\_\_\_\_  
Signature / Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**Affidavit of Good Standing**

<b>BID:</b>	<b>NAME OF BIDDER:</b>
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The undersigned affirms that there has been no change in certification status under the Commonwealth of Massachusetts Certification Programs since the last date of certification

**Please check all that apply:**

Minority Business Enterprise (MBE)_____	Date Certified: _____
Women Business Enterprise (WBE)_____	Date Certified: _____
Disadvantaged Business Enterprise (DBE)_	Date Certified: _____

\_\_\_\_\_  
**Name of MBE/ WBE/ DBE Subcontractor**

\_\_\_\_\_  
**Signature / Title**

\_\_\_\_\_  
**Date**



[illegible]

## **Worcester Redevelopment Authority**

### **RESPONSIBLE EMPLOYER & INCLUSIONARY PARTICIPATION POLICY**

**WHEREAS**, the Worcester Redevelopment Authority was established as a public agency under chapter one hundred and twenty-one B of the General Laws to undertake projects to eliminate blighted, decadent, deteriorating and substandard areas within the city of Worcester; and

**WHEREAS**, the Worcester Redevelopment Authority finds and determines that it may advance the public purposes for which it was established by including certain minimum standards in construction contracts it awards directly or are awarded by developers and other entities in relation to urban renewal projects initiated by the Worcester Redevelopment Authority; and

**WHEREAS**, the Worcester Redevelopment Authority finds and determines that those minimum standards must include compliance with state laws governing the payment of prevailing wages, the provision of workers compensation coverage, and the proper classification of individuals as employees and not as independent contractors, as well as standards concerning health insurance coverage; and

**WHEREAS**, the Worcester Redevelopment Authority hereby further finds and determines that it may further advance the public purposes which it serves by establishing inclusionary participation requirements involving minorities and women and businesses owned by minorities and women to support educational pools, mentoring programs, joint ventures and the like during the planning, construction and operational phase of urban renewal projects.

**NOW, THEREFORE, BE IT HEREBY RESOLVED**, that it shall be the policy of the Worcester Redevelopment Authority that the following provisions shall apply as specified herein to the various contracts and agreements to which the Worcester Redevelopment Authority is a party:

#### *Article I – General Policy for All Contracts*

Every contract governed by this policy, including every request for proposals, shall include the following requirements:

- (1) Every contractor, at every tier, shall commit to workforce diversity and shall use best efforts to utilize 25 percent Worcester resident work hours, 38 percent people of color and indigenous people work hours and 10 percent women work hours and shall further commit to a goal of utilizing bona-fide women/minority-owned firms qualified by the State Supplier Diversity Office (SDO) or a local certifying agency by contracting with at least fifteen percent women-owned business enterprises (WBE) and ten percent minority-owned business enterprises (MBE) of the combined value of

contracts and subcontracts made by the contractor on account of this contract.

(2) All persons, contractors, and businesses supplying goods and/or services to the W.R.A. shall be required to comply with Chapter 2, Sections 37 (Fair CORI Practices), 38 (Gender Identity and Expression Policy), 39(Wage Theft Prevention) and 40(Human Trafficking Recognition & Elimination Policy) of the city of Worcester Revised Ordinances of 2008, as amended from time to time.

## *Article II - Construction Contracts*

1. The W.R.A. hereby finds and determines that its funds are most efficiently and productively spent by awarding construction contracts to firms that include and enforce provisions requiring compliance with state laws governing the payment of prevailing wages, the provision of workers compensation coverage, and the proper classification of individuals as employees and not as independent contractors, as well as state law concerning health insurance coverage. The W.R.A. hereby further finds and determines that as a consumer of construction services it is appropriate for it to exercise entrepreneurial discretion by requiring firms that are awarded such contracts to comply with this policy because a failure to comply is injurious to the life, health and happiness of individuals employed by such firms and is deleterious to the quality of life in the City where most of such individuals reside.

2. As a condition to the award of a contract, whenever the W.R.A. is procuring construction services subject to the provisions of G.L. chapter 149 and chapter 149A the following shall be incorporated into the procurement documents and made part of the specifications and contract. Every person, company or corporation shall acknowledge, in writing, receipt of said requirements with their bid or proposal.

3. All bidders or proposers and all subcontractors and trade contractors, including subcontractors that are not subject to G.L. c.149, §44F, under the bidder for projects subject to G.L. c.149, §44A(2), and, proposers under G.L. c.149A, shall as a condition for bidding or subcontracting verify under oath and in writing at the time of bidding or submittal in response to an Invitation to Bid or in any event prior to entering into a subcontract at any tier, that they comply with the following conditions for bidding or subcontracting and, for the duration of the project, shall comply with the following obligations:

- a. The bidder or proposer and all trade contractors and subcontractors under the bidder or proposer must comply with the obligations established under G.L. c.149 to pay the appropriate lawful prevailing wage rates to their employees;
- b. The bidder or proposer and all trade contractors and subcontractors under the bidder or proposer must maintain appropriate industrial accident insurance coverage for all the employees on the project in accordance with G.L. c.152;

c. The bidder or proposer and all trade contractors and subcontractors under the bidder must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes and income tax withholding. (G.L. c.149, §148B on employee classification);

d. The bidder or proposer and all trade contractors and subcontractors under the bidder or proposer must at the time of bidding certify that, at the time employees begin work at the worksite, all employees will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration, and shall ensure that all employees working at the worksite possess such qualifications at all times throughout the duration of their work on the project and furnish documentation of successful completion of the course;

e. The bidder or proposer and all trade contractors and subcontractors under the bidder or proposer must be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority.

f. The bidder or proposer and all trade contractors and subcontractors under the bidder or proposer must make arrangements to ensure that each employee of every contractor entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; and the time of each entry or exiting. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign in/out logs shall be provided to the W.R.A. on a daily basis.

g. The bidder or proposer and all trade contractors and subcontractors under the bidder or proposer, prior to bidding or, if not subject to bidding requirements, prior to performing any work on the project, shall sign under oath under oath and provide to the W.R.A. a certification that they are not debarred or otherwise prevented from bidding for or performing work on a public project in the Commonwealth of Massachusetts or in the City.

4. A proposal or bid submitted by any general bidder or by any trade contractor or subcontractor under the general bidder or proposer that does not comply with any of the foregoing conditions for bidding shall be rejected, and no subcontract for work outside the scope of G.L. c.149, §44F shall be awarded to a subcontractor that does not comply with the foregoing conditions.

5. All bidders or proposers and all trade contractors and subcontractors under the bidder or proposer who are awarded or who otherwise obtain contracts on the projects subject to G.L. c.149, §44A(2) or c.149A, shall comply with each of the obligations set forth in this policy for the entire duration of their work on the project, and an officer of each bidder or subcontractor under the bidder shall certify under oath and in writing on a weekly basis that they are in compliance with such obligations.

6. Any proposer, bidder, trade contractor or subcontractor under the bidder or proposer who fails to comply with any one of obligations set forth in this Article II for any period of time shall be, at the sole discretion of the W.R.A., subject to one or more of the following sanctions: (1) cessation of work on the project until compliance is obtained; (2) withholding of payment due under any contract or subcontract until compliance is obtained; (3) permanent removal from any further work on the project.

7. In addition to the sanctions outlined in subsection (6) above, a proposer, general bidder or contractor shall be equally liable for the violations of its subcontractor with the exception of violations arising from work performed pursuant to subcontracts that are subject to G.L. c.149, §44F. Any contractor or subcontractor that has been determined by the City or by any court or agency to have violated any of the obligations set forth in this policy shall be barred from performing any work on any future W.R.A. projects for six months for a first violation, three years for a second violation and permanently for a third violation.

8. A contractor or a subcontractor upon a showing that it is not, despite having made a bona fide attempt, feasible to comply with the requirements of this Article II, may be granted a waiver by the W.R.A. The W.R.A. may delegate authority to grant such waivers to the city of Worcester contract compliance officer or any specifically named individual or individuals. Any such delegate shall report all waivers granted to the W.R.A. for informational purposes on the agenda of the monthly meeting following such waiver.

9. Violations of these requirements shall be considered by the W.R.A. in awarding any future contracts as a factor in determining whether any low bidder is a "responsible" bidder under G.L. c. 149, §44A(1), or G.L. c. 30, § 39M, or whether a firm, trade contractor or subcontractor is a "qualified" firm, trade contractor or subcontractor under G.L. c. 149A, §§ 5 and 8.

### *Article III - Design, Engineering & Procurement Contracts*

1. The W.R.A. shall require every person or entity submitting a proposal to enter into a contract for design services, engineering services, or the procurement of goods, supplies or services in excess of \$100,000, with the W.R.A. to submit with any such proposal an inclusionary participation plan containing the following elements:

- A. A report detailing the results achieved by the contractor over the prior two years to employ minorities and women, subcontract with businesses owned by minorities and women, to support educational pools, mentoring programs, joint venturing and other creative initiatives to increase the level

of participation of minorities and women in employment and new business relationships.

- B. A plan detailing the efforts to be made by the proposer during the term of the proposed contract with the W.R.A. to employ minorities and women, subcontract with businesses owned by minorities and women, to support educational pools, mentoring programs, joint venturing and other creative initiatives to increase the level of participation of minorities and women in employment and new business relationships.

2. Every design services, engineering services or procurement contract awarded by the W.R.A. shall contain the inclusionary participation plan submitted pursuant to section 1.B of this article as legally binding commitments of the designer, engineer or vendor enforceable with provisions allowing the W.R.A. to: 1) suspend work under the contract until compliance is obtained; (2) withhold payment due under the contract until compliance is obtained; or, (3) in egregious cases, terminate the contract.

#### *Article IV - Land Disposition Agreements with Developers*

1. Any land disposition agreement whereby the W.R.A. agrees to convey W.R.A. property as part of the implementation of an urban renewal plan, or otherwise in the furtherance of its public purposes, wherein the value of the property exceeds \$1,000,000 shall include the following:

- A. A requirement that all the contractors and sub-contractors employed by the developer in relation to the project shall, where the amount of any such contract exceeds \$100,000 or the amount of any subcontract exceeds \$25,000, comply with the responsible employer provisions stated in Article II herein.
- B. A plan detailing the actions to be taken by the developer during the design, construction and operation of the proposed development to employ minorities and women, subcontract with businesses owned by minorities and women, to support educational pools, mentoring programs, joint venturing and other creative initiatives to increase the level of participation of minorities and women in employment and new business relationships.
- C. A requirement that the developer make a commitment that all contractors, subcontractors, designers, engineers and suppliers with contracts in excess of \$100,000 with the developer shall use documented bona fide efforts to ensure that, to the maximum practical extent, that the minimum goals set forth in Article I(1) herein are met.
- D. A requirement that the developer make a commitment that all contractors, subcontractors, designers, engineers and suppliers with contracts in excess of \$100,000 with the developer in relation to the project shall:
  - (1) formally advertise notices of all employment opportunities in newspapers published in the city of Worcester and minority and Spanish language publications circulated in the city of Worcester;
  - (2) give notice of such employment opportunities to the city of Worcester and state human resource agencies and active community groups



- and work closely with such agencies and groups to identify women, minorities and low-income persons for employment;
- (3) participate in existing local training programs and work with community-based training organizations, local school and educational agencies to develop new training programs to produce a pool of qualified women, minorities and low-income workers for all levels of employment;
  - (4) support educational pools, mentoring programs, joint venturing and other creative initiatives to increase the level of participation of minorities and women in employment and new business relationships.

E. A requirement that the developer make a commitment that it will:

- (1) provide reports documenting compliance with the foregoing requirements to the W.R.A. or any committee or individual it may designate for this purpose.

#### *Article V - Leases Involving W.R.A. Property*

1. All leases involving property of the W.R.A. wherein the amount of the rental payments exceeds \$100,000 annually shall include the following:
  - A. A requirement that all the contractors and sub-contractors employed by the lessee in relation to the lease shall, where the amount of any such contract exceeds \$100,000 or the amount of any subcontract exceeds \$25,000, comply with the responsible employer provisions stated in Article II herein.
  - B. A plan detailing the actions to be taken by the lessee during the design, construction and operation of the proposed leasehold improvements to employ minorities and women, subcontract with businesses owned by minorities and women, to support educational pools, mentoring programs, joint venturing and other creative initiatives to increase the level of participation of minorities and women in employment and new business relationships.
  - C. A requirement that the lessee make a commitment that all contractors, subcontractors, designers, engineers and suppliers with contracts in excess of \$100,000 with the lessee shall use documented bona fide efforts to ensure that, to the maximum practical extent, that the minimum goals set forth in Article I(1) herein are met.
  - D. A requirement that the lessee make a commitment that all contractors, subcontractors, designers, engineers and suppliers with contracts in excess of \$100,000 with the lessee in relation to the lease shall:
    - (1) formally advertise notices of all employment opportunities in newspapers published in the city of Worcester and minority and Spanish language publications circulated in the city of Worcester;
    - (2) give notice of such employment opportunities to the city of Worcester and state human resource agencies and active community groups

- and work closely with such agencies and groups to identify women, minorities and low-income persons for employment;
- (3) participate in existing local training programs and work with local school and educational agencies to develop new training programs to produce a pool of qualified women, minorities and low-income workers for all levels of employment;
  - (4) support educational pools, mentoring programs, joint venturing and other creative initiatives to increase the level of participation of minorities and women in employment and new business relationships.

E. A requirement that the lessee make a commitment that it will:

- (1) provide reports documenting compliance with the foregoing requirements to the W.R.A. or any committee or individual it may designate for this purpose.

#### *Article VI - Miscellaneous*

1. This policy shall not apply to:
  - A. Cooperation agreements or other contracts or leases entered into with the city of Worcester;
  - B. Grant agreements or other contracts entered into with the commonwealth of Massachusetts or the United States of America;
  - C. Loans, mortgages, bonds or other instruments financing W.R.A. operations, including depository agreements with banks or other financial institutions holding W.R.A. funds.
2. The W.R.A. reserves the right to waive this policy, in whole or in part, with respect to any particular contract, agreement, lease or transaction if it deems such a waiver in the best interests of the W.R.A. and the purposes for which it was established.
3. The W.R.A. reserves the right to impose additional requirements where any particular project is of sufficient size and scope to justify additional expectations and efforts.

Adopted  
September 14, 2004

Amended  
July 18, 2006

Amended  
October 2, 2007

Amended  
March 12, 2013

Amended  
October 12, 2018

Amended  
December 14, 2018

Amended  
September 19,  
2019

Amended  
January 12, 2023

# Subpart 4.11 - System for Award Management

## 4.1100 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the *System for Award Management (SAM)* to—

- (a) Increase visibility of vendor sources (including their geographical locations) for specific *supplies* and services; and
- (b) Establish a common source of vendor data for the Government.

## 4.1101 Definition.

As used in this subpart-

*Agreement* means basic *agreement*, basic ordering *agreement*, or blanket purchase *agreement*.

## 4.1102 Policy.

(a) *Offerors* and quoters are required to be registered in *SAM* at the time an *offer* or quotation is submitted in order to comply with the annual representations and certifications requirements except for—

(1) Purchases under the *micro-purchase* threshold that use a Governmentwide commercial purchase card as both the purchasing and payment mechanism, as opposed to using the purchase card for payment only;

(2) Classified contracts (see 2.101) when registration in *SAM*, or use of *SAM* data, could compromise the safeguarding of *classified information* or national security;

(3) Contracts awarded by-

(i) Deployed *contracting officers* in the course of military operations, including, but not limited to, *contingency operations* as defined in 10 U.S.C.101(a)(13) or *humanitarian or peacekeeping operations* as defined in 10 U.S.C.2302(8);

(ii) *Contracting officers* located outside the *United States* and its *outlying areas*, as defined in 2.101, for work to be performed in support of diplomatic or developmental operations, including those performed in support of foreign assistance programs overseas, in an area that has been designated by the Department of State as a danger pay post (see <https://aoprals.state.gov/>); or

(iii) *Contracting officers* in the conduct of *emergency operations*, such as responses to

natural or environmental disasters or national or civil *emergencies*, e.g., Robert T. Stafford Disaster Relief and *Emergency Assistance Act* (42 U.S.C.5121);

(4) Contracts with individuals for performance outside the *United States* and its *outlying areas*;

(5) Contracts awarded without providing for *full and open competition* due to unusual or compelling urgency (see 6.302-2);

(6) Contract actions at or below \$30,000 awarded to foreign vendors for work performed outside the *United States*, if it is impractical to obtain *SAM* registration; and

(7) *Micro-purchases* that do not use the *electronic funds transfer (EFT)* method for payment and are not required to be reported (see subpart 4.6).

(b) If practical, the *contracting officer* shall modify the contract or *agreement* awarded under paragraph (a)(3) of this section to require *SAM* registration.

(c) *Contracting officers* shall use the legal business name or "doing business as" name and physical address from the contractor's *SAM* registration for the provided *unique entity identifier* to identify the contractor in section A of the contract schedule, similar sections of non-uniform contract formats and *agreements*, and all corresponding forms and data exchanges. *Contracting officers* shall make no changes to the data retrieved from *SAM*.

(d)

(1)

(i) If a contractor has legally changed its business name or "doing business as" name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and *change-of-name agreements* in subpart 42.12, the contractor is required to provide the responsible *contracting officer* a minimum of one business *day's* written notification of its intention to change the name in *SAM*, comply with the requirements of subpart 42.12, and agree *in writing* to the timeline and procedures specified by the responsible *contracting officer*. Along with the notification, the contractor is required to provide the *contracting officer* sufficient documentation to support the legally changed name.

(ii) If the contractor fails to comply with the requirements of paragraph (d)(1)(i) of the clause at 52.204-13, *System for Award Management Maintenance*, or fails to perform the *agreement* at 52.204-13, paragraph (d)(1)(i)(C), and, in the absence of a properly executed novation or change-of-name *agreement*, the *SAM* information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the *EFT* clause of the contract.

(2) The contractor shall not change the name or address for *electronic funds transfer* payments (*EFT*) or manual payments, as appropriate, in the *SAM* record to reflect an assignee for the purpose of *assignment of claims* (see subpart 32.8, *Assignment of Claims*).

(3) Assignees shall be separately registered in *SAM*. Information provided to the contractor's *SAM* record that indicates payments, including those made by *EFT*, to an ultimate recipient other than that contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the *EFT* clause of the contract.

## 4.1103 Procedures.

(a) Unless the *acquisition* is exempt under 4.1102(a), the *contracting officer*—

(1) *Shall* verify that the *offeror* or quoter is registered in SAM (see paragraph (b) of this section) at the time an *offer* or quotation is submitted;

(2) *Should* use the *unique entity identifier* to verify SAM registration—

(i) Via <https://www.sam.gov>; or

(ii) As otherwise provided by agency procedures; or

(3) Need not verify SAM registration before placing an order or call if the contract or *agreement* includes the clause at 52.204-13, *System for Award Management Maintenance*, or a similar agency clause, except when use of the Governmentwide commercial purchase card is contemplated as a method of payment. (See 32.1108(b)(2).)

(b) If the contract action is being awarded in accordance with 4.1102(a)(5), the contractor is required to be registered in SAM within 30 days after contract award, or at least three days prior to submission of the first *invoice*, whichever occurs first.

(c) Agencies *shall* protect against improper disclosure of information contained in SAM.

(d) The *contracting officer shall*, on contractual documents transmitted to the payment office, provide the *unique entity identifier*, or, if applicable, the *Electronic Funds Transfer* indicator, in accordance with agency procedures.

## 4.1104 Disaster Response Registry.

*Contracting officers shall* consult the Disaster Response Registry via <https://www.sam.gov>, Search Records, Advanced Search, Disaster Response Registry Search when *contracting* for debris removal, distribution of *supplies*, reconstruction, and other disaster or *emergency* relief activities inside the United States and *outlying areas*. (See 26.205).

## 4.1105 Solicitation provision and contract clauses.

(a)

(1) Insert the provision at 52.204-7, *System for Award Management*, in all *solicitations* except when the conditions in 4.1102(a) apply.

(2) Insert the provision at 52.204-7, *System for Award Management*, with its *Alternate I* when the *solicitation* is anticipated to be awarded in accordance with 4.1102(a)(5).

(b) Insert the clause at 52.204-13, *System for Award Management Maintenance*, in *solicitations* that contain the provision at 52.204-7, and resulting contracts.