



700 PLEASANT STREET, FIRST FLOOR  
NEW BEDFORD, MA 02740-6263  
TELEPHONE 508-997-6767 (Voice) 508-993-9196 (Fax)

Joseph L. Cosentino  
ADMINISTRATOR

Jane T. Kirby  
EXECUTIVE SECRETARY

**REQUEST FOR PROPOSALS**  
**FOR ENGINEERING SERVICES FOR HVAC FOR TWO**  
**MAINTENANCE FACILITIES**

The Southeastern Regional Transit Authority (SRTA) is seeking price quotes from qualified engineering firms to perform an evaluation of Heating, Ventilation and Air Conditioning (HVAC) at 2 separate buildings being the SRTA New Bedford Maintenance Facility located at 65 Potomska Street, New Bedford, MA 02740 and the SRTA Fall River Maintenance Facility located at 601 Brayton Avenue, Fall River, MA 02720 as to specific individual repairs, rehabilitation, improvements and/or replacement of an individual nature as to each building. All said work to meet current energy and building codes and as they may be amended.

The Scope of Work as to the Maintenance Facility at 65 Potomska Street, New Bedford, MA is to evaluate the HVAC system and to determine what improvements, repair and/or replacement could be made. The Scope of Work as to the Maintenance Facility at 601 Brayton Avenue, Fall River, MA is to evaluate the HVAC system and to determine what improvements, repair and/or replacement could be made.

Plans and Specifications As To Each Project-Prepare final working drawings and specifications which completely describe in detail the work to be done, but not limited to, the materials to be used, equipment, architectural, structural, environmental, and electrical for the improvements, repair and or replacement together with necessary bid package information.

Bidder must assist SRTA in bidding services for any work to be undertaken which will include, but not be limited to, the drafting of Requests for Proposals, cost estimates, construction bid documents and bid alternatives.

Construction phase services will include, but not be limited to, inspections and project management by said Engineer.

Specifications and said Bid package may be requested at the SRTA Administrative Offices, 700 Pleasant St., Suite 103, New Bedford, MA 02740. Phone Number 508-997-6767

Any questions can be posed in writing to Joseph L. Cosentino, Administrator at 508-997-6767 or at [jcsrta@aol.com](mailto:jcsrta@aol.com) on or before February 15, 2010.

All Bids must be submitted and received by 12:00 noon, March 3, 2010

Bidders will be notified as to their ranking on or before March 17, 2010

Bids must be submitted in five (5) copies on the form provided and shall be enclosed in a two separate sealed envelope clearly marked Part "A"--the professional services proposal and Part "B"--the fee proposal. Part "A" and Part "B" must be submitted in separate, clearly marked,

**Serving the Communities of**

Acushnet, Dartmouth, Fairhaven, Fall River, Freetown, Mattapoisett,  
New Bedford, Somerset, Swansea, Westport

sealed packages. The entire package shall be enclosed in one (1) outer envelope which encloses both Part "A" and Part "B" and shall be endorsed:

**"PROPOSAL FOR SERVICES FOR ENGINEERING HVAC FOR TWO  
MAINTENANCE FACILITIES"**

**RFB #: SRTACAP 2010-01**

**Bid Opening Date: March 3, 2010**

**Opening Time: 12:00 noon**

**Attention: Joseph L. Cosentino, Administrator**

Bidders must specify their official name in the upper left-hand corner of the outside of said envelope.

Bids will be opened by the Administrator at 700 Pleasant Street, Suite 103, New Bedford, MA at 12:00 noon on March 3, 2010. Any bids received prior to the opening time shall be held and opened publicly by the Administrator or his designee at the prescribed time and place, unless notice of some other time and place for opening is given in the form of an addendum. The Award will be made by the Authority after review for completeness and responsiveness to the technical specifications and process.

The successful Bidder will be required to comply with all applicable Equal Employment Opportunity laws and regulations and the Federal "Buy America" requirements under CFR 49. A "Buy America" certification must be submitted at the time of the bid together with all other certificates hereto attached to the standard contract clauses.

The Authority has established a goal for participation by Minority and Women Owned Businesses (DBE) of 3%.

All bidders will be required to certify that they are not on the Comptroller's list of ineligible contractors.

This contract is subject to any applicable guidelines for project administration issued by the Federal Transit Administration of the U.S. Department of Transportation and all other applicable federal and state laws, rules and regulations. The right is reserved by SRTA to reject any and all bids or any part of any bid, if it deems it to be in its best interest to do so.

By Order of the Administrator  
Joseph L. Cosentino

**REQUEST FOR PROPOSALS**  
**FOR ENGINEERING SERVICES FOR HVAC FOR TWO**  
**MAINTENANCE FACILITIES**

The Southeastern Regional Transit Authority (SRTA) is seeking price quotes from qualified engineering firms to perform an evaluation of Heating, Ventilation and Air Conditioning (HVAC) at 2 separate buildings being the SRTA New Bedford Maintenance Facility located at 65 Potomska Street, New Bedford, MA 02740 consisting of approximately 15,000 sq. ft. per New Bedford Assessors records and the SRTA Fall River Maintenance Facility located at 601 Brayton Avenue, Fall River, MA 02720 consisting of approximately 14,000 sq. ft per Fall River Assessors records, as to specific individual repairs, rehabilitation and improvements of an individual nature as to each building. Price Quotes will be for both of the projects as set forth below. Firms will be required to provide qualification documentation along with the Price Quote as to each Project.

The Scope of Work as to the Maintenance Facility at 65 Potomska Street, New Bedford, MA is to evaluate the HVAC system and to determine what improvements, repair and/or replacement could be made. The Scope of Work as to the Maintenance Facility at 601 Brayton Avenue, Fall River, MA is to evaluate the HVAC system and to determine what improvements, repair and/or replacement could be made.

Plans and Specifications As To Each Project-Prepare final working drawings and specifications which completely describe in detail the work to be done, but not limited to, the materials to be used, equipment, architectural, structural, environmental, and electrical for the improvements, repair and or replacement together with necessary bid package information all to meet current energy and building codes as they may be amended.

Bidder must assist SRTA in bidding services for any work to be undertaken which will include, but not be limited to, the drafting of Requests for Proposals, cost estimates, construction bid documents and bid alternatives.

Construction phase services will include, but not be limited to, inspections and project management by said Engineer.

This project is being financed in part with financial assistance from the U.S. Department of Transportation, Federal Transit Administration and the Commonwealth of Massachusetts Department of Transportation and the resulting contract will be subject to the terms of the contract for financial assistance between SRTA and FTA.

**I. SRTA TRANSIT SERVICES**

SRTA is a regional transit authority created pursuant to MGL c161B. It currently provides public transportation within the Cities of Fall River and New Bedford and the Towns of Dartmouth, Fairhaven, Mattapoisett, Westport, Freetown, Acushnet, Somerset and Swansea, Massachusetts. The transportation services provided by SRTA at the present time include operation of fixed route bus service in Dartmouth, Fall River, New Bedford, Fairhaven, Acushnet, Westport, Swansea and Somerset consists of 24 routes, a fleet of 66 transit buses which operate approximately 1.2 million revenue miles per year. Service is provided six days per week and the system carries 1.7 million passengers annually. .

## **II. PROJECT BUDGET**

The current cost budget for the HVAC for both maintenance facilities is approximately \$600,000.

## **III. SCOPE OF SERVICES**

The firm will be required to prepare and complete all necessary designs and engineering services, cost estimates, bid documents, construction specifications, Requests for Proposals and construction supervision necessary to complete the project including, but not limited to, the tasks described on the following pages.

### **Task I - Design Development**

- a. Prepare conceptual designs and cost estimates. The designs must be consistent with the available funding for this project as stated above.
- b. Identify all necessary local, state and federal permits and approvals.

### **Task II – Construction Documents**

- a. Prepare final plans, bid documents, and construction specifications consistent with all applicable local, state and federal regulations and codes, including but not limited to, building codes, public bid law, Davis-Bacon Act and Massachusetts Prevailing Wage Law.
- b. Supervise the bidding process, prepare all addenda, attend sub-bid and general bid openings, and evaluate bids and all related services.

### **Task III – Services During Construction**

- a. Provide engineering services during the construction including a “clerk of the works.” Services to include but are not limited to the following:
  1. Inspections and review of construction.
  2. Interpretations of plans and specifications.
  3. Evaluate change orders and shop drawings.
  4. Review and approve contractor periodic payment requests.
  5. Advise SRTA during construction of contractor’s performance.
  6. File periodic progress reports and attend project meetings.
  7. Monitor contractor’s compliance with specifications, and provide testing as necessary.
  8. Coordinate on-site construction.
  9. Make recommendations to SRTA for final acceptance of the project.
  10. Monitor compliance with Federal/State wage requirements.
  11. Prepare as-built plans and provide other closeout procedures.

### **Task IV - General Requirements**

The firm will be required to attend all public meetings and appear before permitting and regulatory agencies and boards as necessary. The firm will provide up to 5 copies of all bid documents and specifications for distribution to local, state and federal agencies and permitting authorities.

The successful proposer shall be required to complete Tasks I and IIa within 30 days of said contract award.

**IT IS THE RESPONSIBILITY OF EACH SUBMITTING FIRM TO DEFINE THE FULL SCOPE OF SERVICES NECESSARY TO ACCOMPLISH SRТА'S OBJECTIVES.**

**V. PROPOSAL CONTENT**

Each firm shall submit (5) copies of their entire proposal. Each proposal shall be developed in two (2) parts: Part "A"--the professional services proposal and Part "B"--the fee proposal. Part "A" and Part "B" must be submitted in separate, clearly marked, sealed packages. The entire package shall be enclosed in one (1) outer envelope which encloses both Part "A" and Part "B" and shall be endorsed:

**REQUEST FOR PROPOSALS FOR ENGINEERING SERVICES FOR HVAC FOR TWO MAINTENANCE FACILITIES**

The submission shall be made to:

Joseph L. Cosentino, Administrator  
Southeastern Regional Transit Authority  
700 Pleasant Street, Suite 103  
New Bedford, MA 02740  
Telephone (508) 997-6767

Proposals must arrive at SRТА by 12:00 noon, March 3, 2010. All proposals which are received timely will become the property of SRТА. SRТА reserves the right to reject any and all proposals. The proposals shall include the following:

**Part A.**

- A. Statement of the Project: State in precise terms your understanding of the project.
- B. Deliverables: Provide a concise narrative description of the proposed services and identify all "deliverables" for each task.
- C. Work Plan: Describe in detailed narrative your proposed work plan for successfully accomplishing each task. Indicate the number of man-hours allocated for each task under each phase
- D. Qualifications: Describe firm's qualifications and experience including all sub-consultants, the project manager and key personnel.
- E. Manpower: Proposals shall identify all of professional personnel by skill and qualification that will be assigned to this project. Resumes are required for the project manager and all key personnel.
- F. Prior Experience: Proposals shall include descriptions of the offeror's qualifying experience, including time intervals of projects successfully completed. A list of related projects completed in the past five years and a list of professional references must be included.
- G. Required Certifications.

**Part B - Fee Proposal** The Fee Proposal must include a complete breakdown of the proposed fee for each phase and Task of the project including labor rates, man hours, overhead, profit and direct expenses of the proposer and all sub-consultants. The information requested is required to

support the reasonableness of your quotation and is for internal SRTA staff and committee use only. The data will be held in confidence and not revealed to competitors to the extent required by law. Your method of establishing costs should be fully described. Any optional services should be clearly identified.

## **VI. EVALUATION AND SELECTION PROCEDURE**

SRTA will use competitive proposal procedures based on The Brooks Act for this solicitation.

- (1) The offeror's qualifications and experience will be evaluated.

### ***Evaluation Criteria***

- a. Qualifications of the firm **(30 points)**
  - b. Qualifications of persons assigned to this project. **(30 points)**
  - c. Project understanding – as identified in response to this RFP. **(20 points)**
  - d. Client references **(10 points)**
  - e. Work Plan/Program identified **(10 points)**
- (2) Price will be excluded as an evaluation factor.
  - (3) Negotiations will be conducted only with the most qualified offeror; and,
  - (4) Failing agreement on price, negotiations with the next qualified offeror will be conducted until a contract award is made to the most qualified offeror whose price is fair and reasonable to SRTA.

## **VII. AWARD**

Award will be made to the proposer who furnishes the proposal which, in the opinion of the Authority, offers a fair and reasonable price best suited for the Authority's requirements from a contractual and technical standpoint.

## **VIII. PRE-PROPOSAL MEETING**

MANDATORY Pre-proposal Meetings will take place on Friday, February 19, 2010, at 9:00AM at the SRTA Maintenance Facility at 601 Brayton Avenue , Fall River, MA 02720 and on Friday, February 19, 2010, at 1:00PM at the SRTA Maintenance Facility located at 65 Potomska Street, New Bedford, MA 02740. Attendance at the Pre-proposal meetings is mandatory in order that all proposers may view what presently exists and what is being specifically requested as to each HVAC system. The square footage set forth in this RFP are the sizes of the entire structures including office areas and garage areas each of which may require separate systems. Attendance is necessary in order to be able to design proper systems for said HVAC.

## **IX. CERTIFICATIONS**

A proposer will not be eligible for award of any contract under this request for proposals unless such proposer has submitted as part of its Proposal - Part "A", the certifications attached hereto.

## **X. QUESTIONS**

Any questions concerning this solicitation must be submitted in writing to Joseph L. Cosentino at the address cited above on or before February 15, 2010.

## **XI. SUPPLEMENTARY PROVISIONS**

Attention of all proposers is directed to the Standard Terms and Conditions and Bid Protest Procedures enclosed herewith which are incorporated herein by reference.

## **XII. CIVIL RIGHTS**

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 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out the requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

## **XIII. DISADVANTAGE BUSINESS CERTIFIED**

It is the goal of SRTA that certified minority business enterprises participate in a minimum of three and one-half percent (3 %) of the total value of SRTA's goods and services procurement. The proposer is required to make a good faith effort to assist SRTA in meeting that goal in this procurement.

## **FEDERAL CONTRACT CLAUSES & FORMS**

### **FLY AMERICA** **49 U.S.C. §40118 41 CFR Part 301-10**

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

### **BUY AMERICA** **49 U.S.C. 5323(j) 49 CFR Part 661**

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

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

### **CARGO PREFERENCE** **46 U.S.C. 1241 46 CFR Part 381**

**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

Contract Clauses  
Master List  
01/27/10

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

**SEISMIC SAFETY**

**42 U.S.C. 7701 et seq. 49 CFR Part 41**

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

**ENERGY CONSERVATION**

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

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.

**CLEAN WATER**

**33 U.S.C. 1251**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

### **LOBBYING**

#### **31 U.S.C. 1352 49 CFR Part 19 49 CFR Part 20**

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier- to- tier up to the recipient.

### **ACCESS TO RECORDS AND REPORTS**

#### **49 U.S.C. 5325 18 CFR 18.36 49 CFR 633.17**

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other

non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

### **FEDERAL CHANGES**

#### **49 CFR Part 18**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA , as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **BONDING REQUIREMENTS**

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than \$1 million;

(2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

### **Bid Bond Requirements**

#### **(a) Bid Security**

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

#### **(b) Rights Reserved**

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

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of Southeastern Regional Transit Authority, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

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

Southeastern Regional Transit Authority total damages, so as to make Southeastern Regional Transit Authority whole.

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

### **Performance and Payment Bonding Requirements**

The Contractor shall be required to obtain performance and payment bonds as follows:

#### (a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Southeastern Regional Transit Authority determines that a lesser amount would be adequate for the protection of the Southeastern Regional Transit Authority.

2. The Southeastern Regional Transit Authority may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Southeastern Regional Transit Authority may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

#### (b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million.

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, the Southeastern Regional Transit Authority may require additional protection as required by subparagraph 1 if the contract price is increased.

### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all

respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

### **CLEAN AIR**

#### **42 U.S.C. 7401 et seq 40 CFR 15.61 49 CFR Part 18**

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

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

### **RECYCLED PRODUCTS**

#### **42 U.S.C. 696240 CFR Part 247 Executive Order 12873**

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

### **DAVIS-BACON ACT**

#### **40 USC. § 276a -276a-5 (1995) 29 CFR. § 5 (1995)**

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents

thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

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

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

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour

Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (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 **Southeastern 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 Southeastern 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 Southeastern 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 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

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

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

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

(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 (3)(ii)(B) of this section.

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

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

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

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage

and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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

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

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

**40 U.S.C. §327 -333 (1995) 29 C.F.R. § 5 (1995) 29 C.F.R. § 1926 (1995)**

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek(2)

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

(3) **Withholding for unpaid wages and liquidated damages** - The (**write in the name of the grantee or recipient** ) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

**Section 107 (OSHA):**

**Contract Work Hours and Safety Standards Act** - (i) The Contractor agrees to comply with section 107 of the Contract t Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, " Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will

not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

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

### **COPELAND ANTI-KICKBACK ACT**

**40 U.S.C. § 276c (1995) 29 C.F.R. § 3 (1995) 29 C.F.R. § 5 (1995)**

3.1 of the Copeland Act makes it clear that the purpose of the Act is to assist in "the enforcement of the minimum wage provisions of the Davis- Bacon Act." In keeping with this intent DOL has included a section on the Copeland Act in the mandatory language of the Davis-Bacon provisions. The language can be found at §5.5(a)(5) of the Davis-Bacon model clauses and reads as follows:

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

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

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

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the

clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS**  
**AND RELATED ACTS**

**31 U.S.C. 3801 et seq. 49 CFR Part 31 18 U.S.C. 1001**  
**49 U.S.C. 5307**

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

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. .§ 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

**21. TERMINATION**

**49 U.S.C.Part 18 FTA Circular 4220.1D**

a. **Termination for Convenience (General Provision)** The Southeastern Regional Transit Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Southeastern Regional Transit Authority to be paid the Contractor. If the Contractor has

any property in its possession belonging to the Southeastern Regional Transit Authority, the Contractor will account for the same, and dispose of it in the manner the Southeastern Regional Transit Authority directs.

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

If it is later determined by the Southeastern Regional Transit Authority 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 Southeastern Regional Transit Authority, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** The Southeastern Regional Transit Authority 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 Southeastern Regional Transit Authority's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor or written notice from Southeastern Regional Transit Authority setting forth the nature of said breach or default, Southeastern Regional Transit Authority 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 Southeastern Regional Transit Authority from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach** In the event that Southeastern Regional Transit Authority elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Southeastern Regional Transit Authority shall not limit Southeastern Regional Transit Authority's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**h. Termination for Default** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Southeastern Regional Transit Authority may terminate this contract for default. The Southeastern Regional Transit Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession

of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

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

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

## **GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

### **49 CFR Part 29 Executive Order 12549**

(Instructions) The certification and instruction language is contained at 29 CFR Part 29, Appendix B, and must be included in IFB's and RFP's [for inclusion by contractors in their bids or proposals] for all contracts over \$100,000, regardless of the type of contract to be awarded. **Certification Regarding Debarment, Suspension, and Other Responsibility Matters** - Lower Tier Covered Transactions (Third Party Contracts over \$100,000).

#### **Instructions for Certification**

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Southeastern Regional

Transit Authority may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to Southeastern Regional Transit Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Southeastern Regional Transit Authority for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Southeastern Regional Transit Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Southeastern Regional Transit Authority may pursue available remedies including suspension and/or debarment.

**"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"**

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction**(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49

C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

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

### **CIVIL RIGHTS REQUIREMENTS**

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

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

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

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

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

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective

employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

## **BREACHES AND DISPUTE RESOLUTION**

### **49 CFR Part 18FTA Circular 4220.1F**

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Southeastern Regional Transit Authority's Administrator. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Administrator. 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 Administrator shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

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

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Southeastern Regional Transit Authority 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 Southeastern Regional Transit Authority 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 Southeastern Regional Transit Authority, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval

of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### **49 CFR Part 23**

#### **Disadvantaged Business Enterprises**

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 3.5 %.
- 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 Southeastern Regional Transit Authority deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- c. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:
1. The names and addresses of DBE firms that will participate in this contract;
  2. A description of the work each DBE will perform;
  3. The dollar amount of the participation of each DBE firm participating;
  4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
  5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
  6. If the contract goal is not met, evidence of good faith efforts to do so.

**[Bidders][Offerors]** must present the information required above **[as a matter of**

responsiveness] [with initial proposals] [prior to contract award] (see 49 CFR 26.53(3)).

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

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

e. The contractor must promptly notify **{insert agency name}**, 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 **{insert agency name}**.

### **STATE AND LOCAL LAW DISCLAIMER**

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

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

#### **FTA Circular 4220.1F**

**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, dated October 2008, 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 Southeastern Regional Transit Authority requests which would cause Southeastern Regional Transit Authority to be in violation of the FTA terms and conditions.

**BUY AMERICA CERTIFICATION**

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

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

***(Certification for Contracts, Grants, Loans, and Cooperative Agreements)***

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

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

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

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

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

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

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

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

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

**GOVERNMENTWIDE DEBARMENT AND SUSPENSION**  
**49 CFR Part 29 Executive Order 12549**

The Lower Tier Participant (potential sub-grantee, or sub-recipient under an FTA project, potential third party contractor, or potential administrator under a major third party contract), \_\_\_\_\_ (Contractor's name); certifies by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

*(If the Lower Tier Participant (potential sub-grantee or sub-recipient under any FTA project, potential third party contractor, or potential subcontractor under a major third party contract) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal.)*

THE LOWER-TIER PARTICIPANT (POTENTIAL SUB-GRANTEE, OR SUB-RECIPIENT UNDER A FTA PROJECT, POTENTIAL THIR PARTY CONTRACT OR POTENTIAL SUBCONTRACTOR UNDER A MAJOR THIR PARTY CONTRACT) \_\_\_\_\_ . CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

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

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

\_\_\_\_\_  
Date



102 CMR: OFFICE FOR CHILDREN

102 CMR 12.00: MINIMUM STANDARDS FOR CHILDCARE TUITION ASSISTANCE AND ON-SITE OR NEAR-SITE SUBSIDIZED CHILDCARE PLACEMENTS

Section

12.01: Introduction

12.02: Definitions

12.03: General Rules

12.04: Minimum Standards

12.01: Introduction

These standards adopted in accordance with St. 1990. C. 521 s. 7. As amended by St. 1991. C. 320. stress the commitment of state government to provide employees with affordable childcare for the purpose of allowing employees to be gainfully employed. Pursuant to St. 1990. C. 321. S. 7. As amended by St. 1991. C. 339. on and after July 1, 1991, no contract for goods and services of any type shall be awarded by the State or any of its authorities to an employer having 50 or more full-time employees unless the employer has established a dependent care assistance program ("DCAP") or cafeteria plan whose benefits include a DCAP. As alternatives to a cafeteria plan whose benefits include a DCAP, an employer may offer is employee's childcare tuition assistance or on-site or near-site subsidized childcare placements. In fulfilling its mandate to develop minimum standards for childcare tuition assistance and on-site or near-site subsidized Childcare placements; the Office for Children has developed 102 CMR 12.00.

12.02: Definitions

As used in 102 CMR 12.00, the following words shall have the following meaning unless the context otherwise requires:

Award. The notification to an employer of the State's decision to enter into a contract with said employer for the procurement of goods or services.

Child. A child of the employee under age 13 for whom the employee is entitled to claim an exemption on his or her federal income tax return: a dependent 13 years of age through 21 years of age inclusive for whom the employee is entitled to claim an exemption on his or her federal income tax return who is physically incapable of caring for himself or herself, and who regularly spends at least eight hours each day in the employee's household; or a child of the employee who is not a dependent but who regularly is in the employee's legal or physical custody for at least six months of the year.

Contract. A legally binding and enforceable written agreement to provide goods or services in consideration of compensation to be paid by the State. For the purposes 102 CMR 12.00, the term "Contract" shall not refer to:

- (a) grants-in-aid;
- (b) Provider Participation Agreements issued under the State's Medical Assistance (Medicaid) Program;
- (c) amendments, renewals, and extensions of contracts, as defined by applicable statutes and procurement regulations awarded, awarded prior to July 1, 1992;
- (d) procurement of goods or services pursuant to 802 CMR 2.28 (PD); or
- (e) procurement in which funds are earmarked by law for a specifically identified contractor or class of contractors.

Exempt Employer. Any employer who certifies that it employs fewer than 50 full-time (35 hours per week) employees on the date of the award of the contract.

Legal Childcare. Care and supervision of infants and children licensed pursuant to M.G.L. c. 39A or otherwise permitted by applicable law, arranged for the purpose of allowing the employee to be gainfully employed. Examples of such care and supervision include the following: in-home care providers, au pair services, care by relatives, homemaker services, family day care homes, group day care homes, day care centers, preschool programs, nursery schools, private kindergartens, before and after-school programs, temporary shelter care programs and programs which offer night care, and summer day camps for children.

Near-site. The childcare facility is within three miles or 15 minutes travel time, whichever is less.

On-site. On the premises.

Placement. A reserved slot at a legal childcare facility that meets the needs of the child(ren) of the employees.

Qualified Employer. An employer which certifies that it has established a dependent care assistance program which may be a cafeteria plan whose benefits include a dependent care assistance program, or Childcare tuition assistance, or on-site or near-site subsidized Childcare placements to its employees.

Qualifying Individual. A child of the employee under age 13 for whom the employee is entitled to claim an exemption on his or her federal income tax return; a dependent for whom the employee is entitled to claim an exemption on his or her federal income tax return who is physically or mentally incapable of caring for himself or herself, and who regularly spends at least eight hours each day in the employee's household; the employee's spouse who is physically or mentally incapable of self-care and who regularly spends at least eight hours each day in the employee's household; or a child of the employee who is not a dependent but who regularly is in the employee's legal or physical custody for at least six months of the year.

Secretary. The Secretary of the State's Executive Office for Administration and Finance or his or her designee.

State. The Commonwealth of Massachusetts and any authority established as a public instrumentality of the Commonwealth of Massachusetts.

Subsidized Childcare. Childcare provided by an employer or another at less than the actual charge for childcare at that particular Childcare facility.

Tuition Assistance. Monetary assistance by an employer to or on behalf of employees toward the cost of providing Childcares. Such assistance may include vouchers, cash assistance, or reimbursement.

#### 12.03: General Rules

- (1) General Rule. Except as provided in 102 CMR 12.03(2), the State shall not make an award of any Contract to an employer unless said employer is a Qualified or Exempt Employer.
- (2) Special Emergency. Notwithstanding the provisions of 102 CMR 12.03(1), the State may make an Award of a Contract to an employer which is neither Qualified nor Exempt upon certification by the procuring governmental unit and the Secretary that:
  - (a) failure to award a contract to the particular employer would pose a substantial threat to the life, health, safety, or welfare of persons or the protection of property;
  - (b) there is only one employer which, by virtue of unique capabilities or circumstances, proprietary technology, exclusive copyrights, patents or licenses, monopoly status (including all cases in which the contractor is a public department or utility), is qualified to deliver the goods or perform the services specifically required and failure to deliver the goods or perform the services specifically required would involve the health or safety of the people or their property; or
  - (c) requiring compliance with 102 CMR 12.03 would violate federal law, contravene the orders of a court of competent jurisdiction or cause the loss of federal funds.
- (3) Discrimination. Contributions or benefits provided pursuant to 102 CMR 12.04 shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents consistent with Internal Revenue Code Section 129. Discrimination will result in possible adverse action on the contract or a refusal to enter into a contract.

#### 12.04: Minimum Standards

(1) Dependent care assistance program. A qualified employer which offers its employees a dependent care assistance program shall meet the requirements of Sections 125 or 129 of the Federal Internal Revenue Code of 1986 or any successor section, as amended and in effect for the taxable year.

(2) Minimum standard applicable to tuition assistance and on-site or near-site subsidized childcare placements. A qualified employer which chooses to offer to its employees either tuition assistance or on-site or near-site subsidized Childcare placements shall contribute in cash or in kind a minimum amount equal to at least .25% of the employer's annual gross payroll. For the purposes of 102 CMR 12.04(2), employee is defined as any person who is regularly scheduled to work for an employer for at least 17-1/2 hours per week.

#### REGULATORY AUTHORITY

St. 1990. c. 521. s. 7.; St. 1991. c. 329

**Commonwealth of MA Childcare / Daycare Certification  
Contractor's Certification**

\_\_\_\_\_ (The contractor) hereby certifies that it is in compliance with Chapter 521 on the Acts of 1990, as amended by Chapter 329 of the Acts of 1991, and the regulations 102 CMR 12.00 promulgated pursuant thereto.

\_\_\_\_\_ There is a program for childcare in compliance with these regulations

\_\_\_\_\_ There are fewer than 50 fulltime people employed in this company

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title (Please print)

\_\_\_\_\_  
Date

CERTIFICATION OF PRIMARY PARTICIPANT

PROJECT NO.: RFP SRTA 2010-01

THE PRIMARY PARTICIPANT \_\_\_\_\_

CERTIFIES TO THE BEST OF ITS KNOWLEDGE AND BELIEVE, THAT IT AND ITS PRINCIPALS:

1. ARE NOT PRESENTLY DEBARRED, SUSPENDED, PURPOSED FOR DEBARRMENT, DECLARED INELIGIBLE , OR VOLUNTARILY EXCLUDED FROM COVERED TRANSACTIONS BY ANY FEDERAL DEPARTMENT OR AGENCY;

2. HAVE NOT WITHIN A THREE-YEAR PERIOD PRECEDING THIS PROPOSAL BEEN CONVICTED OF OR HAD A CIVIL JUDGMENT RENDERED AGAINST THEM FOR COMMISSION OF FRAUD OR A CRIMINAL OFFENSE IN CONNECTION WITH OBTAINING, ATTEMPTING TO OBTAIN, OR PERFORMING A PUBLIC (FEDERAL, STATE OR LOCAL) TRANSACTION OR CONTRACT UNDER A PUBLIC TRANSACTION; VIOLATION OF FEDERAL OR STATE ANTITRUST STATUTES OR COMMISSION OF EMBEZZLEMENT, THEFT, FORGERY, BRIBERY, FALSIFICATION OR DESTRUCTION OF RECORDS, MAKING FALSE STATEMENTS, OR RECEIVING STOLEN PROPERTY;

3. ARE NOT PRESENTLY INDICTED FOR OR OTHERWISE CRIMINALLY OR CIVILLY CHARGED BY A GOVERNMENT ENTITY (FEDERAL, STATE OR LOCAL) WITH COMMISSION OF ANY OF THE OFFENSES ENUMERATED IN PARAGRAPH (2) OF THIS CERTIFICATION ; AND

4. HAVE NOT WITHIN A THREE-YEAR PERIOD PRECEDING THIS APPLICATION /PROPOSAL HAD ONE OR MORE PUBLIC TRANSACTIONS (FEDERAL, STATE OR LOCAL) TERMINATED FOR CAUSE OR DEFAULT.

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

\_\_\_\_\_  
Signature and Title of Authorized Official

THE UNDERSIGNED CHIEF LEGAL COUNSEL FOR THE  
\_\_\_\_\_ HEREBY CERTIFIES THAT THE

\_\_\_\_\_ HAS AUTHORITY UNDER STATE AND  
LOCAL LAW TO COMPLY WITH THE SUBJECT ASSURANCES AND THAT THE  
CERTIFICATION ABOVE HAS BEEN LEGALLY MADE.

\_\_\_\_\_  
Signature of Applicant's Attorney

## **Part 1. SRTA Procedures**

### **A. General**

Protests will only be accepted by SRTA from prospective bidders or offerers whose direct economic interest would be affected by the award of the contract or refusal to award a contract. SRTA will consider all such protests whether submitted before or after the award of a contract. All protests must be in writing and conform to the following requirements

1. Be concise and legally arranged
2. Provide name, address and telephone numbers of protestor.
3. Identification of the solicitation or contract number
4. Provide a clear and detailed statement of the legal and factual grounds of the protest including copies of all relevant documents.
5. A statement as to what relief is requested.

### **B. Protest Before Award**

#### **1. General**

Protests before award must be submitted within the time frame as specified below. If the written protest is not received by the time specified the bid or evaluation process shall continue.

#### **2. Protest Before Bid Opening**

Protest addressing the adequacy of the Invitation for Bid, RFP's including the pre-award procedure, the Instruction to Bidders, General terms and conditions, specifications and scope of work must be filed with SRTA not less than seven (7) full working days before bid opening. Thereafter, all issues and appeals are deemed waived by all interested parties

Upon receipt of the written protest, SRTA will determine if the bid opening should be postponed. If the bid opening is postponed, SRTA will immediately contact prime contractors and subcontractors who have been furnished a copy of the specifications that a protest has been filed and the bid opening is postponed until a final decision is issued. Any appropriate addenda will be issued regarding a rescheduling of the bid opening. Any protest may be withdrawn at any time before SRTA has issued its decision.

#### **3. Protest After Bid Opening**

A protest of a decision of SRTA to award a contract to a prime contractor or a subcontractor must conform to A. above and be received by SRTA within ten (10) full working days of its decision. Thereafter, such issues are deemed waived by all interested parties.

In addition, when a protest against the making of an award is received and SRTA determines to withhold the award pending disposition of the protest, the bidders (Whose bids might become eligible for award shall be requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance (with consent of sureties if any) to avoid the need for re-advertising.

When a written protest against making an award is received, the award shall not be made until five (5) days after the matter is received. SRTA may, however, proceed to make an award if it determines that:

- a) The items to be procured are urgently requested or,
- b) Delivery or performance will be unduly delayed by failure to make the award promptly, or
- c) Failure to make a prompt award would otherwise cause undue harm to SRTA, the

Commonwealth or the Federal Government. In the event that SRTA determines that an award is to be made during the five (5) day period during the pendency of a protest, FTA will be notified prior to the making of the award. FTA reserves the right not to participate in such procurements. If an award is made the appropriate documents will be prepared to explain the need for the award with notice going to the protestor and other concerned parties.

### **C. Protest After Award**

Protest against an award must be filed with SRTA within five (5) full working days immediately following the award. This protest shall conform to the requirements of A above. Thereafter, such issues are deemed waived by all interested parties. Although the number of persons involved in or affected by the filing of a protest may be limited to instances where an award has been made the contractor shall be furnished with

the notice of protest and related information. Also, if it appears that the award may be invalidated and a delay in receiving the supplies or service is not prejudicial to SRTA's interest, SRTA shall consider a mutual agreement with the contractor to suspend performance on a no-cost basis.

**D. SRTA's Decision of the Protest**

SRTA shall render its decision in writing within fourteen (14) working days from the receipt of the written protest and shall provide notice of this decision to all interested parties. Following an adverse decision by SRTA the protestor may file a protest with the Federal Transit Administration (FTA)

**PART 11 FTA REVIEW OF PROTEST**

- a. FTA will only review protests regarding the alleged failure of SRTA to have written protest procedures or alleged failure to follow such procedures.
- b. Alleged violations on other grounds are under the jurisdiction of the appropriate State or Local administrative or judicial authorities. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal regulation See e.g.. Buy America Requirements 49 CFR Part 661 (Section 6612:15) Participation by Minority Business Enterprises in Department of Transportation Programs 49 CFR Section 23:7'1.
- c. FTA will only review protests submitted by an interested party as defined in paragraph B below.

**A. REMEDY**

FTA's remedy for SRTA's failure to have written protest procedures or failure to follow such procedure is limited to requiring SRTA to develop such procedures, if necessary, and follow such procedures in reviewing the protest at issue. If SRTA desires FTA financial participation in the contract in question. In instances where SRTA has awarded to another bidder or offeror prior to FTAs decision on the protest, FTA may refuse to participate in funding the contract.

**B. DEFINITIONS**

For purposes of this Bid Protest Procedure, the following definitions apply:

- a. Days: refers to working days of the Federal Government
- b. File or submit refers to the date of receipt by the FTA
- c. Interested Parties means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract
- d. Bid includes the term "Offer" or proposal as used in the he context of negotiated procurements.

**C. TIME FOR FILING**

- a. Protestors shall file a protest with FTA not later than five (5) days after a final decision is rendered under the SRTA protest procedures. In instances where the protestor alleges that SRTA failed to make a final determination on the protest, protestors shall file a protest with FTA not later that five (5) days after the protestor knew or should have known of the SRTA failure to render a final determination on the protest.
- b. SRTA shall not award a contract for five (5) days following its decision on a bid protest except in accordance with the provisions and limitations of subparagraphs G. After the five (5) days, SRTA shall confirm with FTA that FTA has not received a protest on the contract in question.

**D. SUBMISSION OF PROTEST TO FTA**

- a. Protests should be filed with the appropriate FTA Regional Office with a concurrent copy to SRTA
- b. The Protest filed with FTA shall:
  - (1) Include the name and address of the protestor
  - (2) Identify SRTA, project number and the number of the correct solicitation
  - (3) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.

**E. SRTA RESPONSE**

- a. FTA shall notify SRTA in a timely manner of the receipt of a protest. FTA shall instruct SRTA to notify the contractor of the protest if award has been made or, if no award has been made, to notify all interested parties. SRTA shall instruct all who received such notice that they may communicate further directly with FTA.
- b. SRTA shall submit the following information no later than ten (10) days after receipt of notification by FTA of the protest.
  - (1) a copy of SRTA's protest procedure
  - (2) a description of the process followed concerning the protestor's protest, and
  - (3) any supporting documentation
- c. SRTA shall provide the protestor with a copy of the above submission.

#### **F. PROTESTOR COMMENTS**

The protestor must submit any comments on the SRTA submission not later than ten (10) days after the protestor's receipt of SRTA submission.

#### **G. WITHHOLDING OF AWARD**

When a protest has been timely filed with SRTA before award, SRTA shall not make any award prior to five (5) days after the resolution of the protest, or if a protest has been filed with FTA during the pendency of the protest, unless SRTA determines that:

- a. The items to be procured are urgently required
- b. Delivery or performance will be unduly delayed by failure to make the award promptly or
- c. Failure to make prompt award will otherwise cause undue harm to SRTA or the Federal Government

In the event that SRTA determines that the award is to be made during the five (5) day period. Following the local protest decision or the pendency of a protest, SRTA shall notify SRTA prior to making such award. FTA will not review the sufficiency of SRTA's determination to award during the pendency of a protest prior to FTA bid protest decision. FTA reserves the right not to participate in any contract awarded during the pendency of a protest.

#### **H. FTA ACTION**

Upon receipt of the submission, FTA will either request further information or a conference among the parties, or will render a decision on the protest.

