

**REQUEST FOR QUALIFICATIONS**  
**MAY 16, 2024**

**CONTRACT ADMINISTRATION AND CONSTRUCTION ENGINEERING INSPECTION SERVICES**  
**RFQ # 2024-ContractAdmin&Insp-003**  
**Proposal Due Date – June 21, 2024 – 10:00am CST**

An authorized signature is required below on this solicitation. It shall constitute an acceptance of a contract that may result from this proposal.

*Funding Source: Federal Transit Administration (FTA)*

**EXHIBIT A**  
**PROPOSER’S SIGNATORY PAGE**

<b>Proposing Company Name</b> <i>(include Fed I.D. No.)</i>	
<b>Address, City</b> <b>State &amp; Zip</b>	
<b>Phone Number(s)</b> <i>(main, cell &amp; fax)</i>	
<b>Addendum Acknowledgement</b> <i>(check CATS website)</i>	<b>Must</b> Acknowledge receipt of addendums (if any) issued to RFQ. Check CATS website and reflect here: #1____, #2____ #3____ #4____
<b>Authorized Signature</b>	Date:
<b>Print Authority Name &amp; Title</b> <i>Include E-mail Contact(s) Info</i>	

*Proposer **MUST sign** and complete this signatory page “Exhibit A” and return with proposal submission. Failure to do so will result in the proposal being rejected. **Above signature must be original.***

**Schedule of Events / Timelines & Due Dates**  
**CONTRACT ADMINISTRATION AND CONSTRUCTION ENGINEERING INSPECTION SERVICES**  
**RFQ #2024- ContractAdmin&Insp-003**

Events	Timelines & Due Dates
Public Notice – Official Journal	May 16, 17 and 21, 2024
Public Notice – DBE Publication	May 23, 2024
Contractors Notified and RFQ posted on CATS, State Procurement LAPAC, and Central Bidding websites	May 16, 2024
Written Inquiries /Questions Due <i>(to be email)</i>	June 3, 2024
CATS Responses to Questions <i>(via addendum issued)</i>	June 10, 2024
<b>RFQ Due Date/Deadline Receipt</b>	<b>10:00am (CST) June 21, 2024</b>
Anticipated CATS Board of Commissioner’s Approval	July 23, 2024

*CATS reserves the right to change the Schedule of Events/ Timeline & Due Dates at any time.*

**EXHIBIT A - SIGNATORY PAGE**

### **Important Notice to Proposers**

All responses to this Request for Qualifications should be labeled as indicated below and delivered or mailed to the address as follows:

**Capital Area Transit System  
Attention: CATS Procurement Department  
2250 Florida Blvd.  
Baton Rouge, LA 70802**

**Bottom Left Corner of the Envelope / Package should indicate the following:**

**Proposing Company Name and Address  
Contract Administration and Construction Engineering Inspection Services  
RFQ # 2024-ContractAdmin&Insp-003  
Due Date & Time: **June 21, 2024 – 10 AM (CST)****

#### **Proposal Receipt and Location:**

Proposals will be received until the time specified in the **Schedule of Events - Timeline & Due Dates** by **CATS Procurement Department, 2250 Florida Blvd., Baton Rouge, LA 70802** (front office reception area Monday thru Friday 8am thru 4pm CST). **One (1) original** should be sent via mail/courier in a sealed package bearing the name and address of the Proposer and the **RFQ Number** as indicated in the **Notice to Proposers** above. CATS will be accepting electronic bids/proposals via email at: [catsprocurement@brcats.com](mailto:catsprocurement@brcats.com) – with a subject line: **Solicitation # title** of bid.

#### **Proposer's Delivery Service:**

- The solicitation delivery method is the responsibility of the vendor.
- CATS is not responsible for any delays caused by the vendor's chosen means of delivery.
- Late proposals will not be accepted under any circumstances.

#### **Proposer Inquiries – Questions and Answers (Q&A):**

If additional information is necessary to enable Proposers to better interpret the information contained in the solicitation, **written** questions will be accepted **only** via email to [catsprocurement@brcats.com](mailto:catsprocurement@brcats.com) until the date indicated in the **Schedule of Events/ Timeline & Due Dates** (*refer to page 1- Exhibit A*). All questions and CATS responses will be consolidated and in an addendum to this solicitation and will be posted on CATS website.

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## **PART 1**

### **GENERAL INFORMATION AND TERMS & CONDITIONS**

#### **A. Introduction and Background**

This Request for Qualifications (“RFQ”) is issued by the Capital Area Transit System (“CATS”), a political subdivision operating the public transit system in the Cities of Baton Rouge and Baker, Parish of East Baton Rouge, Louisiana.

CATS is seeking statements of qualifications from individuals for the **Contract Administration and Construction Engineering Inspection Services**. This RFQ describes the minimum acceptable requirements for the entire project.

#### **B. Goals**

CATS is seeking responses for proposers’ qualifications for a Contract Administration and Construction Engineering Inspection Services. It is CATS intent to have a contract in place as reflected in the Schedule of Events/Timeline and Due Dates.

#### **C. Proposal Transmittal Due Date**

Proposers shall submit proposals by the time specified in the Schedule of Events/ Timeline & Due Dates (refer to **Exhibit A-page 1**). Late proposals will not be accepted under any circumstances. Failure to meet the opening date and time shall result in proposal rejection.

Late proposal submittal will not be opened and will be rejected and considered non-responsive. The proposer will be notified via email and given the opportunity to pick up or make arrangements with CATS for the return of the rejected proposal. Late proposals which are not picked up within four weeks will be destroyed.

#### **D. Inquiries (Questions and Answers – Q&A)**

Proposers may submit written questions at any time up to the deadline date reflected in the Schedule of Events /Timeline & Due Dates. Any explanations or response desired by a Proposer regarding the meaning or interpretation of this solicitation must be requested in writing, by email only, on or prior to the cut-off date. Oral explanations, responses or instructions will not be binding. Proposer inquiries must in writing and submitted via e-mail to: [catsprocurement@brcats.com](mailto:catsprocurement@brcats.com) – with a subject line: Q&A RFQ # 2024-ContractAdmin&Insp-003

#### **E. Preproposal Conference/ Site Visit**

No Pre-Proposal Conference / Site Visit is scheduled at this time. If one becomes necessary, potential firms will be notified via email through an addendum to this RFQ which will be posted on CATS website.

#### **F. Period of Performance**

The contract period of performance is anticipated to be from time of award through twelve (12) months after that date.

### **G. Contract Award**

It is CATS intent to award to a single Contractor. Proposers are **discouraged** from submitting their own standard terms and conditions with their proposals. The RFQ, including any addenda and any new information acquired through presentations and/or discussion, and the proposal of the selected Contractor will become part of any contract initiated by CATS.

Contracts up to \$50,000 annually can be approved and awarded by the CATS Chief Executive Officer (CEO). Contracts above \$50,000 annually must be approved by the CATS Board of Commissioners. After approval, a contract award will be made to the Proposer with the highest score, whose proposal, conforming to the RFQ is the most advantageous to CATS, price and other factors considered.

### **H. Response Format / Qualifications and Experience**

A crucial aspect of this project is a detailed evaluation of each company including resources, experience and performance. This RFQ is designed to facilitate the evaluation and selection of a firm best able to achieve CATS objectives. Response packages should be based upon the desired scope of work, the submission requirements of the RFQ, and general instructions to submitters.

1. All information should be typewritten on plain, white 8½ x 11-inch bond paper and should not exceed 20 pages.
2. Any and all corrections and/or erasures must be initialed.
3. In case of any discrepancies with copies, the original signed submission will be considered in evaluating the RFQ.
4. The applicable exhibit(s) in this RFQ must be completed and signed by the person authorized to bind a contract.
5. Each submitter is solely responsible for the accuracy and completeness of the submitted information.
6. The submitter must provide the following information to be considered for an award of contract. All responses will be evaluated and scored pursuant to the terms of Part 4 (Evaluation Selection Process) of this RFQ. Submissions should include the following:

- Cover Letter
- Company Profile/Qualifications/Experience
- Staff Qualifications
- Schedule
- References
- Additional Information

### **I. Qualifications based competitive procedures require the following:**

1. An offeror's qualifications be evaluated;
2. Any Prices are to be excluded as an evaluation factor;
3. Negotiations will be conducted with only the most qualified offeror; and
4. If both parties fail to agree on price, negotiations with the next most qualified offeror will be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

## **PART 2**

### **CATS TERMS AND CONDITIONS**

#### **A. Assignment, Transfer of Interests**

There shall be no assignment/transfer of interest or delegation of Contractor's rights, duties or responsibilities of the Contractor under the contract derived from this RFQ without the prior written approval of CATS. The contract that will be derived from this RFQ shall not be subcontracted except with the written consent of CATS. No such consent shall be construed as making CATS a party to such subcontract, or subjecting CATS to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the prime Contractor of its liability and obligation under this contract. All transactions with CATS must be through the prime Contractor.

#### **B. Audit - Right to Audit**

The Contractor shall permit an authorized representative of CATS to periodically inspect and audit all data and records of the Contractor relating to his performance under this contract.

#### **C. Binding - Solicitation**

All responses submitted in accordance with the terms and conditions of this RFQ shall be binding upon the responder for **ninety days (90)** after the RFQ opening date unless mutually agreed otherwise

#### **D. CATS Rights**

1. CATS reserves the right to reject all of the proposals and to waive informalities and minor irregularities in the responses received, to issue subsequent Requests for Qualifications, to cancel or change this request for qualifications, and to, at any time, approve, disapprove, reduce, expand or cancel any or all of the work to be undertaken.
2. CATS reserves the right to terminate the contract if it is in the best interests of CATS, provided that payment may be made for certain costs and services rendered up to the date of termination as provided in the termination for convenience provisions found in this RFQ, Changes/Addenda and Withdrawals.

#### **E. Confidentiality of Solicitation Information**

The following provisions will apply unless the CATS statement of work specifically indicates that all information exchanged will be non-confidential.

All financial, statistical, personal, technical and other data and information relating to the CATS operations which are designated confidential by CATS and made available to the Contractor in order to carry out this contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to CATS.

The identification of all such confidential data and information as well as CATS procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by CATS in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by CATS to be adequate for the protection of the CATS confidential information, such methods and procedures may be used, with the written consent of CATS, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of the paragraph to keep confidential any data or information, which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the contract, or is rightfully obtained from third parties.

#### **F. Changes/Addenda and Withdrawals**

- a) Changes/Addenda: Changes to the RFQ will be issued in the form of written addenda. All interested proposers should inform CATS in writing of their desire to receive notice of changes. Addenda shall only be issued to those prospective proposers who requested such information. Written requests for addenda must be sent to CATS Procurement via email at: [catsprocurement@brcats.com](mailto:catsprocurement@brcats.com).
- b) The Proposer should complete and acknowledge receipt of any addenda found on **Exhibit A** in this solicitation. CATS reserves the right to (a) change the Schedule of Events/Timeline & Due Dates (refer to Exhibit A); (b) and /or issue addenda to the solicitation at any time; and (c) as well as the right to cancel or re-issue this solicitation. By signing Exhibit A, the proposer acknowledges receipt of all addenda which can also be found on CATS, Central Bidding and State Procurement LAPAC websites at <https://www.brcats.com/page/procurement> and <https://www.centralbidding.com> and <https://www.cfprd.doa.louisiana.gov/osp/lapac/deptbids.cfm>
- c) Vendors are encouraged to check CATS and State Procurement LAPAC websites frequently for any addenda that may be issued to this RFQ. CATS is not responsible for a proposer's failure to download any addenda required to complete this RFQ.
- d) **Withdrawals:** A proposer may withdraw a response that has been submitted at any time up to the RFQ specified opening date and time. To accomplish this, a written request signed by the authorized representative of the proposer must be submitted to CATS Procurement.

#### **G. Contractor Responsibility**

The Contractor will assume all responsibility for the contract and will be the sole point of contact regarding all products and services provided and payment of all charges resulting from this contract. Further, Contractor must agree as follows:

- Contractor will perform its duties as an "Independent Contractor" and not as an employee of CATS
- Contractor assures that all applicable certifications, licenses, insurance and permits shall remain current during the entire contract term.

#### **H. Corporation Responsibility (LA Secretary of State)**

If the Contractor is a corporation not incorporated under the laws of the State of Louisiana, the Contractor should have obtained a certificate of authority pursuant to R.S. 12:301-



302 from the Secretary of State of Louisiana. If the Contractor is a for-profit corporation whose stock is not publicly traded, the Contractor should ensure that a disclosure of ownership form has been properly filed with the Secretary of State of Louisiana.

Any Contractor who is awarded a contract will be required to be registered with the Louisiana Secretary of State prior to award, and within 7 to 10 day of request by CATS. Please file in accordance with the Louisiana Secretary of State:

<https://www.sos.la.gov/BusinessServices/SearchForLouisianaBusinessFilings/Pages/default.aspx>.

#### **I. Cost for Developing Proposal**

This Proposal is not to be construed as a commitment of any kind, nor does it commit CATS to pay for any costs incurred in the submission of a proposal or for any cost incurred prior to the execution of a formal contract. CATS is not liable for any costs incurred by prospective Proposers, Vendors or Contractors prior to issuance of, or entering into, a contract. Costs associated with developing the proposal, submission of electronic presentations and any other expenses incurred by the Proposer in responding to this solicitation are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by CATS.

#### **J. Definitions and Terminology**

1. ADA – Americans With Disabilities Act
2. Authorized Signature – The person who is executing this contractor on behalf of Proposer /Contractor who is authorized to bind a contract.
3. Bidder/Proposer/Contractor/Vendor – Any firm submitting a proposal or bid to CATS
4. Bid, Proposal, Agreement and Contract – are used interchangeably throughout the RFQ, and in this context, are intended to mean “Proposal”
5. CATS - Capital Area Transit System
6. Contract – The word “contract” shall be considered synonymous with the word “agreement”
7. Contractor – The word “contractor” shall be considered synonymous with the words “vendor, bidder, proposer”
8. DBE – Disadvantaged Business Enterprise
9. FTA – Federal Transit Administration
10. May - The term “may” denotes an advisory or permissible action
11. PEC – Proposal Evaluation Committee
12. RFQ – Request for Qualifications
13. RFP – Request for Proposals
14. Should – The term “should” denotes a desirable action
15. Sub-Contractor – A person or business who is awarded a portion of an existing contract by a principal or general contractor
16. Suitable – Type, material design, and method approved by CATS
17. UCP-DBE: Unified Certification Program – Disadvantaged Business Enterprise
18. USDOT – United States Department of Transportation
19. Will, Shall or Must – The terms “will/shall/must” denote mandatory requirements

#### **K. Equal Opportunity Employer (EEO)**

CATS is an equal opportunity employer, and does not discriminate against anyone on the basis of race, sex, creed, color, religion, national origin, ancestry, reprisal, disability, sexual orientation, marital status or political affiliation.

#### **L. Errors and Omissions**

CATS will not be liable for any errors in the solicitation. Responders will not be allowed to alter solicitation documents after the deadline for submission. However, CATS reserves the right to make corrections or clarifications due to patent errors identified in the solicitation by CATS or the responders. CATS reserves the right to request clarification or additional information from the responders.

#### **M. Ethics**

The State of Louisiana Code of Governmental Ethics places restrictions against conflict of interest and establishes guidelines to ensure that appropriate ethical standards are followed. If any question exists regarding potential violation of the Code of Ethics, Contractor should contact CATS Procurement Department prior to submission of this RFQ. Any violation of the Code of Ethics shall be grounds for disqualification of Proposer or cancellation of contract.

#### **N. Insurance**

Required Coverage: Contractor shall procure, maintain, and keep in force, at Contractor's expense, the insurance coverage as required below and shall cause CATS to be an additional insured on all policies (except professional liability). Contractor shall provide Proof of Insurance to CATS prior to award. Proof of Insurance shall include an additional insured endorsement. For the duration of the Agreement and until all work under the Agreement is completed, Contractor shall have and maintain, at Contractor's expense, the following types of insurance and shall comply with all limits, terms and conditions of such insurance and each of the policies shall contain a provision that CATS shall be given thirty (30) days written notice before the cancellation of the policy.

a. Commercial General and Umbrella Liability Insurance: Commercial General Liability (CGL) Insurance and, if necessary, Commercial Umbrella covering bodily injury and property damage. This insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. Combined single limit shall not be less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate.

b. Workers' Compensation: Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of the Contractor's headquarters. Employers Liability is included with a minimum limit of \$1,000,000 per accident/per disease/per employee. If work is to be performed over water and involves maritime exposure, applicable LHWCA, Jones Act, or other maritime law coverage shall be.

included. A.M. Best's insurance company rating requirement may be waived for workers compensation coverage only.

c. Professional Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Agreement, Professional Liability Insurance covering any damages caused by an error, omission, or any negligent acts. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Annual aggregate

limit shall not be less than \$2,000,000. If the Professional liability insurance required under this Agreement is arranged on a “claims made” basis “tail” coverage will be required at the completion of this Agreement and for 24 months duration thereafter. Contractor shall be responsible for furnishing certification of “tail” coverage or continuous “claims made” liability coverage for 24 months following Agreement completion. Continuous “claims made” coverage will be acceptable in lieu of “tail” coverage provided its retroactive date is on or before the effective date of this Agreement.

- d. **Cyber Liability:** Cyber liability insurance, including first-party costs, due to an electronic breach that compromises CATS data shall have a minimum limit per occurrence of \$1,000,000. Claims-made coverage is acceptable. The date of the inception of the policy must be no later than the first date of the anticipated work under this contract. It shall provide coverage for the duration of this contract and shall have an expiration date no earlier than 30 days after the anticipated completion of the contract. The policy shall provide an extended reporting period of not less than 24 months from the expiration date of the policy, if the policy is not renewed. The policy shall not be cancelled for any reason, except non-payment of premium.

**O. Indemnification**

The Contractor agrees to indemnify, defend, and hold harmless CATS, its officers, commissioners, directors, employees, agents, and assigns from and against any and all actual or alleged claims, any and all losses, damages, which include incidental, consequential, indemnity and special damages, expenses, including attorneys’ fees and costs of defense, fines and penalties and other liabilities that may be asserted by any person or entity that arises out of the fault or negligence of the Contractor, sub-contractor, partner, and any of their officers, directors, employees, agents and assigns respectively in carrying out their obligations under this agreement, which is caused by defective workmanship or materials in products manufactured or supplied by Contractor, or which arises out of Contractor’s failure to comply with any state or federal statute, law, regulation. Contractor shall have no indemnification liability under this section for any claims, damages, losses and expenses to the extent they arise out of or relate to the negligent acts or omissions or willful misconduct of CATS.

**P. Law Governing**

All disputes concerning this solicitation and award of this contract will be subject to, governed by, and construed according to CATS Procurement Protest Procedures (if federally funded) and the laws of the State of Louisiana. The proper venue for any dispute shall be the 19<sup>th</sup> Judicial District Court for the Parish of East Baton Rouge, Louisiana.

**Q. Liability Disclaimer**

In the absence of a written provision in the contract with the successful proposer specifically stating otherwise, CATS shall not hold harmless or indemnify any Contractor for any liability whatsoever.

**R. Materials in Proposal**

Proposals shall be based only on the material contained in this solicitation. The solicitation addenda includes official responses to questions and other material, which may be provided by CATS pursuant to the solicitation.

**S. Ownership of Proposal**

All materials submitted in response to this solicitation become the property of CATS. Selection or rejection of a response does not affect this right. All proposals submitted will be retained by CATS and not returned to Proposers, unless it is a late proposal, in accordance with “**Proposal Transmittal and Due Date**” section in this proposal.

**T. Rejection – Right to Reject**

Issuance of this RFQ in no way constitutes a commitment by CATS to award a contract. CATS shall have the right to reject all of the proposals received and to waive irregularities and informalities.

**U. Patent and Copyright Infringement (with indemnification language)**

Contractor shall, at its own sole expense, indemnify, defend and hold harmless, Capital Area Transit System (“CATS”), its agents, employees, officers, directors, subcontractors, and their successors and assigns against all claims, demands, suits, actions, proceedings, investigations, damages, settlements, costs and expenses (including all reasonable costs or expenses of all proceedings, and including attorneys’, experts’ and witness fees), arising from or relating to any actual or alleged infringement or violation of any patent, copyright, trademark, trade secrets, or other intellectual property right of a third party. In the event of any action or threatened action, Contractor shall promptly notify CATS of such action or threatened action. The indemnification obligations contained in this Article shall survive the expiration or termination of this Agreement.

**V. Payment and Invoicing Procedures**

Advance or down payments of any kind will not be made. Federal and State law requires proof of the materials having been furnished, the services rendered, or the labor performed as described, before payment is made.

1. Following Intent to Award notice, CATS and the successful Contractor will enter into a separate contract which will include a detailed payment schedule.
2. CATS Payment Terms in general are Net 30 after receipt of approved invoice.

**Invoices:** At a minimum, all invoices must include the following information:

1. project name and purchase order number;
2. detailed itemized description of items and amount to be paid;
3. date(s) of service(s)/deliveries made;

**W. Permits, Licenses & Taxes**

The contractor shall furnish all necessary permits, licenses and certificates and comply with all laws or ordinances specific to providing graphic design services as reflected in this RFQ.

## **X. CATS Protest Procedures**

Any protest concerning the issuance, form, contents or interpretation of a request for Bids, bid solicitation, or request for a quotation of price and other terms, must be filed in writing to CATS Procurement, via email to: [catsprocurement@brcats.com](mailto:catsprocurement@brcats.com), prior to ten (10) calendar days before the date the response is due. If not filed timely, all such protests shall be deemed to have been waived. Any protest concerning CATS evaluation of submitted Bids, bids or the award of a contract must be filed in writing with the President of CATS Board no later than six (6) days after the contract award.

All protests shall state specific reasons for the protest and shall provide a physical address, an electronic mailing address, a fax number if available and a telephone number through which the protester can be notified. As soon as possible after the receipt of the protest, the President shall contact a person designated by the President to decide upon the merits of the protest. Except as otherwise provided in this protest procedure statement, the decision of the designated person shall be final.

Protests, changes and modifications, disputes, claims, litigation, and settlements, FTA 2 CFR 200.

## **Y. Blackout Period**

The blackout period is a specified period of time during a competitive sealed procurement process in which any Proposer, bidder, or its agent or representative, is prohibited from communicating with any CATS employee, Board Members, or contractor of CATS that may affect the procurement process. Involvement" in the procurement process includes but may not be limited to project management, design, development, implementation, procurement management, development of specifications, and evaluation of proposals for a particular procurement. All solicitations for competitive sealed procurements will identify a designated contact person. The blackout period will begin upon posting of the solicitation. The blackout period will end when the contract is awarded.

In those instances, in which a prospective Proposer is also an incumbent contractor, CATS and the incumbent contractor may contact each other with respect to the existing contract only. Under no circumstances may CATS and the incumbent contractor and/or its representative(s) discuss the blacked-out procurement.

Any bidder, Proposer, or CATS contractor who violates the blackout period may result in the disqualification of a proposal.

## **Part 3**

### **Scope of Work**

#### **Contract Administration and Construction Engineering Inspection Services**

Capital Area Transit System (CATS) is seeing a qualified consultant to provide Construction Contract Administration and Construction Engineering Inspection services for the North Transit Center located at 5475 Airline Highway, Baton Rouge, LA. Specifically the consultant is required to provide resident engineering, inspection, material testing services, budget, and financial oversight services throughout the life of the project.

This project is wholly funded by the Federal Transit Administration (FTA) and the consultant will need to follow all requirements of FTA rules and regulations.

#### **Project Description**

The North Transit Center is a 1,736 square foot one-story building with a 15,295 square foot concrete platform and a column supported canopy that accommodates eight (8) bus bays. Included in the construction is also the following:

- Clear and grub the existing site, removed noted trees, and fill as required;
- Grade site to meet building elevation and proposed paved area elevations;
- Sub-surface drainage system with detention pond and outlet to Airline Highway;
- Plumbing, electrical, mechanical and site lighting;
- Concrete pavement for bus circulation and parking per plan, noted thickness including base course and sub-base preparation; and
- Landscape.

There are detailed plans and specifications that the contract will have to follow. Close coordination with Our Lady of the Lake Medical Center is required since there is a servitude from McClelland to the CATS property for bus access between the medical facility and the medical records storage facility.

#### **Scope of Services**

The selected consultant will serve as CATS' representative and advocate, manage construction activities, and be an extension of CATS staff.

The successful consultant will have experience managing transportation, capital and/or general construction projects.

**The consultant shall provide the following:**

1. Schedule and conduct the pre-construction meeting.
2. Monitor contractor's performance and enforce all requirements of applicable codes, specifications, and contract drawings.
3. Provide all necessary personnel and equipment to perform the required field testing for quality assurance in accordance with the project specifications.
  - a. Note: The selected consultant must have access to a qualified independent testing laboratory, per 23 CFR 637.209.
4. Monitor construction schedules throughout the course of construction.
5. Prepare and maintain engineer's file in an audit-ready state in accordance with FTA and State of Louisiana guidelines.
6. Review working days, contract time and document time extensions.
7. Maintain a daily inspector's report system that records the hours worked.
8. Track subcontractor's work and make sure the contractor submits a written request prior to substituting a contractor.
9. Maintain organized photographic and/or video records.
10. Monitor the job site for any safety hazards which present a risk to life or limb. Report safety concerns to the CATS project manager immediately.
11. Manage change orders and obtain approval from CATS project manager prior to the contractor's performance of work under a change order.
12. Maintain a log of contingency funds and notify CATS when 80% of the contingency funds have been used.
13. Monitor and document all construction claims and provide recommendations on the disposition of claims to CATS.
14. Review and recommend approval monthly contractor pay applications.
15. Enforce the Davis-Bacon Act by preparing daily reports, monitoring certified payrolls, and doing spot check labor surveys and interviews.
16. Provide final inspection and establish a punch list.
17. Establish a record file which shows the field control, conformation to contract specifications, and payments to the contractor.

**Post-Construction**

1. Complete all documentation including, but not limited to, change order summary, final detail estimate, project acceptance documentation, and claims management/resolution.
2. Prepare final construction report.
3. Prepare final "As-Built" record drawing at the completion of the project.
4. Prepare a binder of all materials and products used in the project for maintenance purposes.

## **Project Documentation**

The consultant shall keep track of the project budget, schedule contract quantities and document field measured units in accordance with the requirement of the project specifications prior to review and recommendation to the CATS Project Manager for payment.

## **Additional Responsibilities**

The consultant shall also monitor the construction and installation of the forty-four (44) bus rapid transit stations. This will only include ensuring that there have been no significant changes to the station locations or the height of the station platforms and will not require daily inspections. The CATS Project Manager will determine frequency, but no more than bi-weekly inspections will be required, until the completion of each station. The construction schedule will be provided to the consultant and some assistance will be required for a final inspection from CATS personnel. Each station will have a different completion date, with a spread over eighteen (18) months, barring any significant delays.

Note: The station construction will be performed under a separate construction contract with the East Baton Rouge City-Parish Government as part of a road construction project.

## **Project Time**

The anticipated timeline for construction is anticipated to four hundred (400) days, barring any weather-related issues.

## **Minimum Personnel Requirements**

1. At least one principal or other responsible member of the prime consultant shall be currently registered in the state of Louisiana as a professional engineer in civil engineering.
2. At least one member of the prime consultant shall have demonstrated experience managing commercial and/or civil construction projects.

## **Response Requirements**

Responses to this RFQ should be submitted according to the instructions outlined below.

1. Cover Letter. This should include contact information for the primary person responsible for the response and for all communication pertaining to this RFQ.
2. Firm Qualifications. A company profile and summary of the firm's qualification in relation to this project along with relevant experience and expertise. The company profile should specify the size of the firm and number of staff available to work on this project.



3. Staff Qualifications. Summary of the lead and technical staff for the project and their qualifications. Staff qualifications should include the role of the staff person, the length of their work experience, areas of expertise, and relevant experience based on this RFQ's Scope of Work. An organization structure must to be provided along with resumes of all staff to work on the project.
4. Schedule. A project schedule that identifies major milestones and key dates should be included. This must include the availability of key Project team members and demonstrate that key Project team members are available to work on the project. The response shall include the estimated number of hours individual personnel will dedicate to the project.
5. References. Provide three (3) recent references, including at least one (1) public agency reference for the resident engineer and inspector. Including names, addresses, telephone numbers, and email addresses.
6. Additional Information. Information considered by responders to be pertinent to this project and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section.

## Part 4

### Evaluation Selection Process

All proposal responses are subject to evaluation by CATS Proposal Evaluation Committee (PEC) established for the purpose of selecting an individual with whom CATS shall award a contract. CATS will evaluate each submittal in response to this RFQ to determine the most qualified proposer.

CATS retains the sole discretion to choose one proposal or to reject all proposals. Proposals shall be evaluated utilizing the stated evaluation criteria as reflected in the table below.

Under no circumstances will any PEC member be allowed to discuss or provide information of any type regarding the evaluations to anyone who is not a member of the committee. Any attempt to communicate with or contact a PEC member may result in the disqualification of a proposal. A written award recommendation shall be made by CATS based on the PEC findings.

Oral submittals/interviews may be required.

<b>RFQ Evaluation Criteria</b>	<b>Points</b>
<p><b><i>Firm Profile, Project Team &amp; Experience:</i></b></p> <p>Qualifications and experience for the lead firm, Project Manager, the team, and the key project staff in projects similar to the Scope of Work of this Request for Qualifications and covering the required skill sets, including the committed degree of participation from key personnel.</p> <p>In particular, the Agency is seeking a team that has demonstrated qualifications with similar projects and a good working relationship with relevant project stakeholders.</p>	70
<p><b><i>References:</i></b></p> <p>Are the firm’s references from past clients and associates favorable? Does the firm show financial and operational stability?</p>	20
<p><b><i>Communications:</i></b></p> <p>Clarity, structure, and readability of the response and all submitted materials.</p>	10
<b>TOTAL MAXIMUM POINTS ALLOWED</b>	100%

**Exhibit B**

**Affidavit of Non-Collusion**  
**RFQ # 2024-ContractAdmin&Insp-003**

**Certification**

I hereby swear (or affirm) under penalty for perjury:

1. That I am the proposer (if the proposer is an individual), a partner in the proposal (if the proposer is a partnership), or an officer or employee of the proposing corporation having the authority to sign on behalf (if the proposer is a corporation);
2. That the attached proposal has been arrived at by the proposer independently, and has been submitted without collusion, and without any agreement, understanding, or planned common course of action with any other vendor of materials, supplies, equipment, or services described in the Request for Qualifications, designed to limit independent proposing or competition;
3. That the contents of the RFQ have not been communicated by the proposer or its employees or agents to any person not an employee or agent of the proposer or its surety or any bond furnished with the proposal, and will not be communicated to any such person prior to the official opening of the proposals; and
4. That I have fully informed myself regarding the accuracy of the statement made in the affidavit.

Company/Firm Name	
Address (City, State, Zip)	
Authorized by:	
Signature:	
Title:	
Date:	

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
 Notary Public

My commission expires \_\_\_\_\_, 2024.

## EXHIBIT C

**BIDDER'S ORGANIZATION** (If the bid is by a joint venture all parties to the bid must complete this form:

**BIDDER IS:**

**AN INDIVIDUAL:**

Individual's Name: \_\_\_\_\_

Doing business as: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

**A PARTNERSHIP**

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

Address: \_\_\_\_\_

Name of person authorized to sign: \_\_\_\_\_

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

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

**A LIMITED LIABILITY COMPANY**

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

Address: \_\_\_\_\_

Name of person authorized to sign: \_\_\_\_\_

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

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

**A CORPORATION**

IF BID IS BY A CORPORATION, THE CORPORATE RESOLUTION MUST BE SUBMITTED WITH BID.

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

Address: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Name of person authorized to sign: \_\_\_\_\_

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

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

**IF BID IS BY A JOINT VENTURE, ALL PARTIES TO THE BID MUST COMPLETE THIS FORM.**

**EXHIBIT D**

**CORPORATE RESOLUTION**

A meeting of The Board of Directors of \_\_\_\_\_,  
A corporation organized under the laws of the State of \_\_\_\_\_ and  
Domiciled in \_\_\_\_\_ was held this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ 20\_\_\_\_ and was attended by a quorum of the members of the board of directors.

The following resolution was offered, duly seconded and after discussion was unanimously adopted by  
said quorum:

**BE IT RESOLVED**, that \_\_\_\_\_ is hereby  
authorized to submit bids and execute agreements on behalf of this corporation with the Capital Area  
Transit System.

**BE IT FURTHER RESOLVED**, that said authorization and appointment shall remain in full force and  
effect, unless revoked by resolution of this Board of Directors and that said revocation will not take effect  
until the Procurement Manager of Capital Area Transit System, shall have been furnished a copy of said  
resolution, duly certified

I, \_\_\_\_\_, hereby certify that I am the Secretary of \_\_\_\_\_  
A corporation created under the laws of the State of \_\_\_\_\_ domiciled in \_\_\_\_\_  
that the foregoing is a true and exact copy of a resolution adopted by a quorum of the Board of  
Directors of said corporation at a meeting legally called and held on the \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_. as said resolution appears of record in the official minutes of the Board of Directors in my  
possession. This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
**SECRETARY**

**Exhibit - E**  
**FTA Lobbying Certification**  
**Required Certification**  
**RFQ # 2024-ContractAdmin&Insp-003**

**Certification Regarding Lobbying**

*(Must be submitted with a proposal 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 sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients 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 & Title of Contractor's Authorized Official:	
Company Name:	

**Exhibit - F**

**Proposer’s Checklist**

The Checklist below is meant to assist proposers when submitting the required documents for this solicitation. It is not necessarily comprehensive of all documents required; therefore, please review the entire solicitation thoroughly to insure submission of the required information, or you may contact CATS Procurement at: [catsprocurement@brcats.com](mailto:catsprocurement@brcats.com) for additional guidance.

<b>CONTRACT ADMINISTRATION AND CONSTRUCTION ENGINEERING INSPECTION SERVICES RFQ # 2024-ContractAdmin&amp;Insp-003</b> <i>(Items to be included)</i>		check list
1.	<b>Exhibit A</b> - (page 1) - Signatory Page & Addendum Acknowledgement <i>(must be completed with original signature and returned with proposal)</i>	
2.	<b>Exhibit B</b> – Non Collusion Affidavit - <i>(should return with proposal)</i>	
3.	<b>Exhibit C</b> – Bidder’s Organization <i>(Should be completed and returned with bid)</i>	
4.	<b>Exhibit D</b> – Corporate Resolution <i>(Should be completed and returned with bid)</i>	
5.	<b>Exhibit E</b> - FTA Lobbying Certificate <i>(must be signed and submitted with proposal)</i>	
6.	<b>Exhibit F</b> – Proposers Checklist	

**Part 5                      Appendix R**  
**FTA Federally Required and Other Model Contract Clauses**  
**RFQ # 2024-ContractAdmin&Insp-003**

#	<b>FTA Federal Clauses Index</b>	Solicitation Applicability	Page No.
	<i>Note: Strike through clauses below are NOT APPLICABLE (N/A) to this Solicitation</i>		
1.	Access to Records & Reports	YES	25
2.	<del>Bonding Requirement (applies &gt;\$100,000)</del>	N/A	25
3.	<del>Bus Testing</del>	N/A	26
4.	<del>Buy America Requirements (applies &gt;\$100,000)</del>	N/A	26
5.	Cargo Preference	YES	28
6.	<del>Charter Service</del>	N/A	28
7.	Clean Air Act & Federal Water Pollution Control Act ( applies >\$150,000 )	YES	29
8.	Civil Rights Laws (EEO, Title VI, ADA. & ADA Access)	YES	29
9.	Disadvantaged Business Enterprise (DBE) Prompt Payment (if threshold for DBE program met)	YES	31
10.	Dispute and Breach of Contract (applies >\$150,000)	YES	35
11.	<del>Employee Protections (Davis Bacon &amp; Anti Kickback -&gt;\$2000) Contract Work hours &amp; Safety Standard Act (applies &gt;\$100,000)</del>	N/A	37
12.	Energy Conservation	YES	40
13.	Federal Changes	YES	41
14.	Fly America	YES	41
15.	Government-Wide Debarment and Suspensions (applies >\$25,000)	YES	41
16.	Incorporation of Federal Terms	YES	42
17.	Lobbying Restrictions (applies >\$100,000 – must be signed and returned w/proposal)	YES	42
18.	No Federal Government Obligation to Third Parties	YES	43
19.	Patent Rights / Rights in Data / Copyrights	YES	43
20.	<del>Pre-Award and Post-Delivery Audits – Rolling Stock</del>	N/A	45
21.	Program Fraud & False/ Fraudulent Statements	YES	45
22.	<del>Public Transportation Employee Protective Arrangements</del>	N/A	46
23.	<del>Recycled Products</del>	N/A	46
24.	Safe Operations of Motor Vehicles / Distracted Driving / Seat Belts	YES	47
25.	<del>School Bus Operations</del>	N/A	47
26.	Seismic Safety (new building & additions)	N/A	48
27.	<del>Substance Abuse Requirements</del>	N/A	48
28.	Termination (applies >\$10,000)	YES	50
29.	Notice to FTA and U.S. DOT Inspector General of information related to fraud, waste, abuse or other legal matters	YES	53
30.	Prohibition on Certain Telecommunications and Video Surveillance Services Equipment	YES	54
31.	Special notification requirements for States	YES	55
32.	Trafficking in Persons	YES	55
33.	Federal Tax Liability and Recent Felony Convictions	YES	57

*By submitting a response, the vendor agrees to abide by the applicable federal certifications.*



## FTA Federally Required and Other Model Contract Clauses

### Contract Administration and Construction Engineering Inspection Services RFQ # 2024-ContractAdmin&Insp-003

#### **1. ACCESS TO RECORDS AND REPORTS** - 49 U.S.C. § 5325(g), 2 C.F.R. § 200.333, 49 C.F.R. part 633

**Applicability to Contracts:** Requirements apply to all contracts funded in whole or in part with FTA funds. The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

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

- a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

#### **2. BONDING REQUIREMENTS** - 2 C.F.R. § 200.325; 31 C.F.R. part 223

**Applicability to Contracts:** Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the recipient if FTA has determined that the Federal interest is adequately protected. If such a determination has **not** been made, the following minimum requirements apply:

- a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must 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 the bid, execute such contractual documents as may be required within the time specified.
- b) A performance bond on the part of 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.

**3. BUS TESTING** - 49 U.S.C. § 5318(e); 49 C.F.R. part 665

**Applicability to Contract:** The Bus Testing requirements pertain only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA’s bus testing requirements in all grant applications for FTA funding for bus procurements.

The operator of the bus testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the recipient during the point in the procurement process specified by the recipient, but in all cases before final acceptance of the first bus by the recipient. The complete bus testing reporting requirements are provided in 49 C.F.R. § 665.11. Although no specific certification and bus testing language is required, recipients can draw on the following language for inclusion in their federally funded procurements.

**Bus Testing**

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

**4. BUY AMERICA REQUIREMENTS** - 49 U.S.C. 5323(j); 49 C.F.R. part 661

**Applicability to Contracts:** FTA’s Buy America law and regulations apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project. FTA cautions that its Buy America regulations are complex. Recipients can obtain detailed information on FTA’s Buy America regulation at the Federal Transit Administration’s Buy America website. The Buy America regulation at 49 C.F.R. § 661.13 requires notification of the Buy America requirements in a recipients bid (or request for proposal) for FTA funded contracts. *Recipients can draw on the following language for inclusion in their federally funded procurements. Note that recipients are responsible for including the correct Buy America certification based on what they are acquiring. Recipients should not include both the rolling stock and steel, iron, or manufactured products certificates in the documents unless acquiring both in the same procurement.*

**Buy America** - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

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

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

**Certificate of Compliance with Buy America Requirements**

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

<b>Date</b>	
<b>Signature</b>	
<b>Company</b>	
<b>Name</b>	
<b>Title</b>	

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

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

<b>Date</b>	
<b>Signature</b>	
<b>Company</b>	
<b>Name</b>	
<b>Title</b>	

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

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

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

<b>Date</b>	
<b>Signature</b>	
<b>Company</b>	
<b>Name</b>	
<b>Title</b>	

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

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

<b>Date</b>	
<b>Signature</b>	
<b>Company</b>	
<b>Name</b>	
<b>Title</b>	

**5. CARGO PREFERENCE REQUIREMENTS** - 46 U.S.C. § 55305; 46 C.F.R. part 381

**Applicability to Contracts** - The Cargo Preference Act of 1954 requirements applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels. The Cargo Preference requirements apply to all contracts involved with the transport of equipment, material, or commodities by ocean vessel.

**Cargo Preference - Use of United States-Flag Vessels** - The contractor agrees:

- a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**6. CHARTER SERVICE** - 49 U.S.C. 5323(d) and (r); 49 C.F.R. part 604

**Applicability to Contracts** - The Charter Bus requirements applies to contracts for operating public transportation service.

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

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

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

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

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

**7. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT - 42 U.S.C. §§ 7401 – 7671q; 33 U.S.C. §§ 1251-1387; 2 C.F.R. part 200, Appendix II (G)**

**Applicability to Contracts** - The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

The Contractor agrees:

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

**8. CIVIL RIGHTS LAWS AND REGULATIONS - (EEO, Title VI, ADA & ADA Access)**

**Applicability to Contracts-** The following Federal Civil Rights laws and regulations apply to all contracts.

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but not limited to:
  - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
  - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

#### **Civil Rights and Equal Opportunity**

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

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

1. **Nondiscrimination** - In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age** - In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

#### **9. DISADVANTAGED BUSINESS ENTERPRISE (DBE) - 49 C.F.R. part 26**

**Background and Applicability** - The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.

FTA recipients must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, recipients are responsible for establishing DBE contract goals on individual DOT-assisted contracts. FTA recipients may use contract goals only on those DOT-assisted contracts that have subcontracting responsibilities. See 49 C.F.R. § 26.51(e). Furthermore, while FTA recipients are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith. FTA recipients and third party contractors can obtain information about the DBE program at the Federal Transit Administration website Disadvantaged Business Enterprise or Department of Transportation website Disadvantaged Business Enterprise Program.

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

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

- a) Withholding monthly progress payments;
- b) Assessing sanctions;
- c) Liquidated damages; and/or
- d) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

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

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

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

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



### **DBE Participation**

For the purpose of this Contract, the AGENCY will accept only DBE's who are:

- a) Certified, at the time of bid opening or proposal evaluation, by the [certifying agency or the Unified Certification Program (UCP)]; or
- b) An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
- c) Certified by another agency approved by the AGENCY.

**DBE Participation Goal - The DBE participation goal for this Contract is set at 11%.** This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 11%** of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive.

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

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

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

- a) Documented communication with the AGENCY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
- b) Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
- c) The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
- d) Written notification to DBE's encouraging participation in the proposed Contract; and
- e) Efforts made to identify specific portions of the work that might be performed by DBE's.

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

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

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

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

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

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

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

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

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the [Agency Name1] and [Agency Name2]. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- CATS to have access to necessary records to examine information as CATS deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of CATS, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

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

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

**10. DISPUTE AND BREACH OF CONTRACT** - 2 C.F.R. § 200.326; 2 C.F.R. part 200, Appendix II (A)

**Applicability to Contracts** - All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

FTA does not prescribe the form or content of such provisions. The provisions developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts. Recipients can draw on these examples for inclusion in their federally funded procurements.

### **Rights and Remedies of CATS**

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

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

For purposes of this Contract, breach shall include [CATS to define].

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

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

### **Disputes**

1. **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of CATS's [title of employee]. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.
2. **Example 2:** CATS and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within CATS and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the

Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

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

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

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

**Remedies** - Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between CATS 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 CATS 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 CATS 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.

**11. EMPLOYEE PROTECTIONS - (Davis Bacon, Anti-Kickback, Contract Work Hours & Safety Standards)** - 49 U.S.C. § 5333(a); 40 U.S.C. §§ 3141 – 3148; 29 C.F.R. part 5; 18 U.S.C. § 874; 29 C.F.R. part 3; 40 U.S.C. §§3701-3708; 29 C.F.R. part 1926

**Applicability to Contracts** - Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:

**1. Prevailing Wage Requirements**

- a) *Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA’s “Davis-Bacon Related Act”);*
- b) *The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and*
- c) *U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.*

**2. “Anti-Kickback” Prohibitions**

- a) *Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874;*
- b) *Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145; and*
- c) *U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. part 3.*

### 3. Contract Work Hours and Safety Standards

- a) *Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and*
- b) *U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.*

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland "Anti-Kickback" Act apply to all prime construction, alteration or repair contracts in excess of \$2,000.

**The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.**

The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In addition, recipients can draw on the following language for inclusion in their federally funded procurements.

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

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

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

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. **These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.**

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

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

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

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

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

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

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

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

**12. ENERGY CONSERVATION** - 42 U.S.C. 6321 et seq.; 49 C.F.R. part 622, subpart C

**Applicability to Contracts** - The Energy Policy and Conservation requirements are applicable to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. part 622, subpart C.

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

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

**13. FEDERAL CHANGES - 49 CFR Part 18**

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

**14. FLY AMERICA** - 49 U.S.C. § 40118; 41 C.F.R. part 301-10; 48 C.F.R. part 47.4

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

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

**Fly America Requirements**

- a) Definitions. As used in this clause-- “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. “United States” means the 50 States, the District of Columbia, and outlying areas. “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence



of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

**Statement of Unavailability of U.S.-Flag Air Carriers** - International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]: The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

**15. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION** - 2 C.F.R. part 180; 2 C.F.R part 1200; 2 C.F.R. § 200.213; 2 C.F.R. part 200 Appendix II (I), Executive Order 12549; Executive Order 12689

**Background and Applicability** - A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

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

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

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

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

**16. INCORPORATION OF FEDERAL TERMS**

**Applicability to Contracts** - The incorporation of FTA terms applies to all federally funded contracts.

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

**17. LOBBYING RESTRICTIONS** - 31 U.S.C. § 1352; 2 C.F.R. § 200.450; 2 C.F.R. part 200 appendix II (J); 49 C.F.R. part 20

**Applicability to Contracts** - The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

**Lobbying Restrictions**

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

- a) 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.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of

Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

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

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

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

**18. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

**Applicability to Contracts** - The No Obligation clause applies to all third-party contracts that are federally funded.

**No Federal Government Obligation to Third Parties.** The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**19. PATENT RIGHTS / RIGHTS IN DATA / COPYRIGHT** - 2 C.F.R. part 200, Appendix II (F); 37 C.F.R. part 401

**Applicability to Contracts** - If the recipient or subrecipient wishes to enter into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award, the recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Except in the case of an “other agreement” in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:

1. Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
2. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

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

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
  - a) Any subject data developed under the Contract, whether or not a copyright has been obtained; and
  - b) Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

**20. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES - 49 U.S.C. 5323(m); 49 C.F.R. part 663**

**Applicability to Contracts** - Recipients purchasing revenue service rolling stock with FTA funds must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663. For more information about pre-award and post-delivery audit requirements, please go to FTA's Buy America page on its website.

Part 663 of Title 49, Code of Federal Regulations, does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Recipients are advised to use the model certificates and language contained in the audit handbook. Additionally, recipients can draw on the following language for inclusion in their federally funded procurements.

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

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

**21. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS - 49 U.S.C. § 5323(l) (1); 31 U.S.C. §§ 3801-3812; 18 U.S.C. § 1001; 49 C.F.R. part 31**

**Applicability to Contracts** - The Program Fraud clause applies to all third party contracts that are federally funded.

The Program Fraud clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

**Program Fraud and False or Fraudulent Statements or Related Acts** - The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a

false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

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

**22. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS - 49 U.S.C. § 5333(b) (“13(c)”); 29 C.F.R. part 215**

**Applicability to Contracts** - The Public Transportation Employee Protective Arrangements apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

**Public Transportation Employee Protective Arrangements** - The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
3. **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

**23. RECYCLED PRODUCTS - 42 U.S.C. § 6962; 40 C.F.R. part 247; 2 C.F.R. part § 200.322**

**Applicability to Contracts** - The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 et seq.), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

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

**24. SAFE OPERATION OF MOTOR VEHICLES** - 23 U.S.C. part 402; Executive Order No. 13043; Executive Order No. 13513; U.S. DOT Order No. 3902.10

**Applicability to Contracts** - The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

**Safe Operation of Motor Vehicles**

1. **Seat Belt Use** - The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or CATS.
2. **Distracted Driving** - The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

**25. SCHOOL BUS OPERATIONS** - 49 U.S.C. 5323(f); 49 C.F.R. part 605

**Applicability to Contracts** - The School Bus requirements apply to contracts for operating public transportation service.

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

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

If Contractor violates this School Bus Agreement, FTA may:

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

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

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

**26. SEISMIC SAFETY** - 42 U.S.C. 7701 et seq.; 49 C.F.R. part 41; Executive Order (E.O.) 12699

**Applicability to Contracts** - The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

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

**27. SUBSTANCE ABUSE REQUIREMENTS** - 49 U.S.C. § 5331; 49 C.F.R. part 655; 49 C.F.R. part 40

**Applicability to Contracts** - Third party contractors who perform safety-sensitive functions must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;
5. Carrying a firearm for security purposes.

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

FTA's drug and alcohol rules, 49 C.F.R. part 655, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with part 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.



How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

**FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.**

- 1) **Explanation of Model Contract Clauses - Option 1** - The recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 C.F.R. part 655. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option for only those recipients that have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.
- 2) **Explanation of Model Contract Clauses - Option 2** - The recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under Option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that, without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.
- 3) **Explanation of Model Contract Clauses - Option 3** - The recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

## **SUBSTANCE ABUSE TESTING**

- 1) **Option 1** - The Contractor agrees to participate in CATS's drug and alcohol program established in compliance with 49 C.F.R. part 655.
- 2) **Option 2** - The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or CATS, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its

compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

- 3) **Option 3** - The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or CATS, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before [insert date or upon request] a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt [insert title of the Policy Statement the recipient wishes the contractor to use] as its policy statement as required under 49 C.F.R. part 655; OR (c) submit for review and approval before [insert date or upon request] a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to: [to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium].

## **28. TERMINATION** - 2 C.F.R. § 200.339; 2 C.F.R. part 200, Appendix II (B)

**Applicability to Contracts** - All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

**Termination for Convenience (General Provision)** - CATS may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in CATS'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 CATS to be paid the Contractor. If the Contractor has any property in its possession belonging to CATS, the Contractor will account for the same, and dispose of it in the manner CATS directs.

**Termination for Default [Breach or Cause] (General Provision)** - If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, CATS may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor

will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

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

**Waiver of Remedies for any Breach**

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

**Termination for Convenience (Professional or Transit Service Contracts)** - CATS, by written notice, may terminate this contract, in whole or in part, when it is in CATS's interest. If this contract is terminated, CATS shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**Termination for Default (Supplies and Service)** - If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, CATS may terminate this contract for default. CATS shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

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

If this contract is terminated while the Contractor has possession of CATS goods, the Contractor shall, upon direction of CATS, protect and preserve the goods until surrendered to CATS or its agent. The Contractor and

CATS shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

**Termination for Default (Construction)** - If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, CATS may terminate this contract for default. CATS shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, CATS 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 CATS 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 CATS in completing the work.

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

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

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

**Termination for Convenience or Default (Architect and Engineering)** - CATS may terminate this contract in whole or in part, for CATS's convenience or because of the failure of the Contractor to fulfill the contract obligations. CATS shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to CATS's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. CATS has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

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

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

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

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

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

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

**29. NOTICE TO FTA AND U. S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE OR OTHER LEGAL MATTERS** - 2 C.F.R. § 180.220 and 2 C.F.R.1200.220

**Applicability to Contracts** - CATS must Notify FTA if a current or prospective legal matter that may affect the Federal Government emerges, CATS must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which CATS is located. CATS must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- (3) Additional Notice to U.S. DOT Inspector General. CATS must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which CATS is located, if CATS has knowledge of potential fraud, waste, or abuse occurring on a Project

receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between CATS and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of CATS. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of CATS. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of CATS, including divisions tasked with law enforcement or investigatory functions.

**30. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT - 2 C.F.R. § 200.216**

**Applicability to Contract** - Recipients and sub-recipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;  
(2) Extend or renew a contract to procure or obtain; or  
(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for

those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

See Public Law 115-232, section 889 and § 200.471 for additional information.

### **31. SPECIAL NOTIFICATION REQUIREMENTS FOR STATES-**

- (a) *Types of Information.* To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
  - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
  - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- (b) *Documents.* The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

### **32. TRAFFICKING IN PERSONS.**

- (1) *Legal Authorities.* The Recipient agrees to comply and assures the compliance of each Subrecipient, with federal requirements and guidance, including:
- (i) Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); and
  - (ii) The terms of this section 4(f), which have been derived from U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, per U.S. OMB’s direction.
- (2) *Definitions.* The Recipient agrees that for purposes of this section 4(f):
- (i) *Employee* means either an individual who is employed by the Recipient or a Subrecipient, and is participating in a Project or related activities as set forth in the Underlying Agreement, or another person who is participating in a Project or related activities as set forth in the Underlying Agreement and is not compensated by the Recipient, including, but not limited to, a volunteer, or an individual whose services are contributed by the Recipient or Third Party Participant as an in-kind contribution toward the cost sharing requirements of the Recipient’s Underlying Agreement.
  - (ii) *Forced labor* means labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  - (iii) *Private entity* means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25, and includes a for-profit organization, or a nonprofit organization, including any nonprofit organization of higher education, hospital, or tribal

- organization other than one included in the definition of Indian Tribe at 2 CFR § 175.25(b).
  - (iv) Severe forms of trafficking in persons has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102. 23
  - (v) Commercial sex act has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
  - (vi) Coercion has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
- (3) Provisions Applicable to All Recipients. The Recipient agrees to, and assures that its Subrecipients will:
- (i) Provide Information. Inform FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in section 4(f)(4) of this Master Agreement; and
  - (ii) Subagreement Provision. Include the following provision in any subagreement it enters into with a private entity as defined above in section 4(f)(2)
- (iii) of this Master Agreement:
- XXX agrees that it and its employees that participate in the Recipient’s Award, may not: Engage in severe forms of trafficking in persons during the period of time that the Recipient’s Award is in effect, Procure a commercial sex act during the period of time that the Recipient’s Award is in effect, or Use forced labor in the performance of the Recipient’s Award or subagreements thereunder.
- (4) Provisions Applicable to a Private Entity Recipient. If the Recipient is a private entity, it agrees that:
- (i) Prohibitions. It, its employees, its Subrecipients, and its Subrecipients’ employees that participate in the Underlying Agreement will not:
    - (A) Engage in severe forms of trafficking in persons during the period of time that the Recipient’s Underlying Agreement is in effect;
    - (B) Procure a commercial sex act during the period of time that the Recipient’s Underlying Agreement is in effect; or
    - (C) Use forced labor in the performance of the Recipient’s Underlying Agreement or subagreements.
      - (ii) Termination of Federal Assistance. Section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, provide FTA the right to unilaterally terminate the Underlying Agreement for a violation of that Act without penalty to the Federal Government, if FTA determines that the private entity Recipient or its Subrecipient:
        - (A) Has violated a prohibition described above in section 4(g)(4)(i) of this Master Agreement; or
        - (B) Has an employee whose conduct is determined to have violated a prohibition described above in section 4(g)(4)(i) of this Master Agreement because that employee’s conduct is either:
          - a. Associated with the performance of the Recipient’s Underlying Agreement; or
          - b. Imputed to the Recipient or Subrecipient using the standards of due process for conduct of an individual to an organization provided in:



- i. U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200; or
- ii. U.S. OMB regulatory guidance, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180.

(5) Provisions Applicable to a Recipient That is Not a Private Entity. A Recipient that is not a private entity agrees that section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, provides FTA the right to unilaterally terminate the Underlying Agreement, without penalty to the Federal Government, for a violation of that Act if FTA determines that:

(i) A private entity that is the Subrecipient of the Recipient is determined to have engaged in severe forms of trafficking in persons during the period of time that the Recipient’s Underlying Agreement is in effect; procured a commercial sex act during the period of time that the

Recipient’s Underlying Agreement is in effect; or used forced labor in 25 the performance of the Recipient’s Underlying Agreement or subagreements thereunder; or

(ii) An employee of a private entity that is the Subrecipient has engaged in severe forms of trafficking in persons during the period of time that the Recipient’s Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient’s Underlying Agreement is in effect; or used forced labor in the performance of the Recipient’s Underlying Agreement or subagreements thereunder, and whose conduct described above is associated with the performance of the Recipient’s Underlying Agreement; or is imputed to the Subrecipient using the standards for due process to impute the conduct of an individual to an organization as provided in U.S. OMB regulatory guidance, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180, and U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200.

(6) Remedies Other Than Termination of Federal Assistance. The Recipient agrees that FTA’s right to terminate federal assistance as provided in the TVPA and in sections 4(f)(4)(ii) and 4(f)(5) are in addition to all other remedies for noncompliance available to the Federal Government under this Master Agreement.

### **33. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

(1) Transactions Prohibited.

(i) The Recipient agrees that, prior to entering into any Third Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Recipient will obtain from the prospective Third Party Participant a certification that the Third Party Participant—

(A) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(B) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months. 26

(ii) If the prospective Third Party Participant cannot so certify, the Recipient agrees to refer the matter to FTA and not to enter into any Third Party Agreement with the Third Party Participant without FTA’s written approval.

(2) Flow-Down. The Recipient agrees to require all Third Party Participants to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

In connection with the Contract to be awarded as a result of the RFQ to be issued by Capital Area Transit System (CATS) for the following procurement:

**CONTRACT ADMINISTRATION AND CONSTRUCTION ENGINEERING INSPECTION SERVICES**

I hereby certify that I am the \_\_\_\_\_ duly  
(Title)  
Authorized Representative of \_\_\_\_\_  
(Name of Firm)  
\_\_\_\_\_  
(Address)

I do hereby assure CATS that I have read and am familiar with the requirements for Disadvantaged Business Enterprise participation by companies contracting with CATS and that it is the intention of the undersigned to meet such DBE goal.

I understand that CATS has established a goal of 11 % Disadvantaged Business Enterprise (DBE) participation on this contract.

I further understand that this goal percentage is based on the total dollar value of the awarded contract.

I hereby further assure CATS that the undersigned will complete and submit the SCHEDULE OF DBE PARTICIPATION form with this proposal and cause submission of the LETTER OF INTENT TO PERFORM AS A DBE SUBCONTRACTOR form prior to the execution of the contract. I understand that this company may not remain in competition unless the SCHEDULE OF DBE PARTICIPATION form is submitted or this company has met the requirements identified on the form titled DEMONSTRATION OF GOOD FAITH EFFORTS TO OBTAIN DBE PARTICIPATION, proof of which are hereby documented and submitted in lieu of the SCHEDULE OF DBE PARTICIPATION form.

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

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

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

### DBE CONTACT REPORT

This form is provided to assist in documenting the Offeror's DBE research process. Please include DBE contact efforts. Please make a copy or copies of this page, fill out, and include with proposal if the Proposer has more information than can be contained on this report.

Did your firm place a classified legal ad, advertisement, and/or Internet notification requesting the services of DBE Subcontractors for this proposal?    YES \_\_\_\_\_    NO \_\_\_\_\_

Potential DBE Subcontractor	Contact Person	Phone	Goods or Services Description	Date Contacted

Name of Offeror:	
Signature of Authorized Official:	
Date:	
Title of Official:	
Address:	
Telephone:	

DEMONSTRATION OF GOOD FAITH EFFORTS

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned proposer has satisfied the requirements of the solicitation specification in the following manner (please check the appropriate space):

The proposer is committed to a minimum of **11% DBE** utilization on this contract.

The proposer (if unable to meet the DBE goal of **11%**) is committed to a minimum of % DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of proposer's firm:	
Name of proposer's Authorized Individual	Title
(Signature)	Date

## SCHEDULE OF DBE PARTICIPATION

Name of Prime Offeror:		Total Proposed Price:	\$
Procurement Number and Title:		Total Dollars of DBE Participation:	\$

DBE Firm Name	Contact Name and Phone	Type of Work	Work Commencement and Completion	Subcontract Price (\$)
1.				
2.				
3.				
4.				
5.				

The undersigned will enter into a formal agreement with Disadvantaged Businesses for work listed in this Schedule of DBE Participation form upon execution of a contract with the CATS.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**LETTER OF INTENT TO PERFORM AS A DBE SUBCONTRACTOR**  
*(submit for each DBE subcontractor proposed)*

Name of Prime Offeror:	
Procurement Number and Title:	
Address of Prime Offeror:	
Prime Offeror's Telephone:	

The undersigned DBE intends to perform the following described work in connection with the above project.	
<i>Specify in detail the particular work, items, or parts therefore to be performed):</i>	
<i>Subcontract Price:</i>	<i>% of Total Bid/Proposed Price:</i>

Name of DBE Firm:	
Procurement Number and Title:	
Signature of DBE Authorized Official:	
Address of DBE Firm:	
DBE Firm's Telephone:	