

**FEDERAL AND STATE REQUIREMENTS  
AND SPECIAL CONDITIONS**  
*for*  
**SERVICE CONTRACTS AND OTHER EQUIPMENT**

**GENERAL REQUIREMENTS**

**1. General**

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration (FTA). Citations to federal law, regulation, and guidance references include, but are not limited to, the FTA Master Agreement, as may be updated or amended; FTA Circular 4220.1G, dated January 17, 2025; "Best Practices Procurement & Lessons Learned Manual", October 2016; and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R. Part 200, as may be updated or amended.

**THE FOLLOWING MAY BE USED SYNONYMOUSLY:**

- **"BIDDER" AND "CONTRACTOR"**
- **"PURCHASER," "PROCURING AGENCY," AND "OWNER"**

**2. Incorporation of Federal Transit Administration (FTA) Terms**

- A. The preceding and following provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (US DOT), whether or not expressly set forth in the preceding contract provisions. In order to comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements, all contractual provisions required by US DOT, as set forth in FTA Circular 4220.1G, dated January 17, 2025, the Master Agreement, as may be updated or amended, and 2 C.F.R. part 200 (as adopted by US DOT), 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.
- B. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause the Procuring Agency to be in violation of the FTA terms and conditions.

**3. Definitions**

- A. *Third Party Agreement*, in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following agreements, such as: (1) Third party contracts; (2) Leases; (3) Third party subcontracts; and (4) Other similar arrangements or agreements.
- B. *Third Party Participant*, in accordance with the Master Agreement unless FTA determines otherwise in writing, includes all of the following participants, such as: (1) Third party contractors; (2) Lessees; (3) Third party subcontractors; and (4) Other participants in the Project.

**4. Federal Changes**

The 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 may be amended or promulgated from time to time

during the term of this contract. Contractor's failure to comply shall constitute a material breach of this contract.

**5. No Federal Government Obligations to Third Parties**

A. The No Obligation clause extends to all third party contractors and their contracts at every tier:

The Owner 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 Owner, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

**6. Federal Tax Liability and Recent Felony Convictions**

The Contractor agrees that, prior to entering into any subcontract, Contractor will require subcontractor(s) to provide a certification on Federal Tax Liability and Recent Felony Convictions, which should be identical to the certification that Contractor provided Purchaser. If the prospective subcontractor cannot certify as to the statements in the certification, Contractor shall not enter into the subcontract absent Purchaser and FTA approval. Contractor agrees to include this clause in every subcontract awarded at every tier.

***The requisite "Federal Tax Liability Certification," which is included as ATTACHMENT A, must be executed and be submitted with the bid.***

**7. Notification of Federal Participation**

To the extent required by Federal law, the State of North Carolina agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project that it will identify the FTA grant source by listing the Catalog of Federal Domestic Assistance Number of the program. The following FTA grant programs will be eligible to participate in this bid: 20.500, 20.505, 20.507, 20.509, 20.513, 20.514, 20.516, 20.518, 20.519, 20.521, 20.522, 20.523, 20.525, 20.526, 20.527, 20.528, 20.529, 20.530, and 20.531. Federal funding assistance up to 80 percent may be provided.

**8. Conflict of Interest**

No employee, officer, board member, or agent of the Owner shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award.

**9. North Carolina State Ethics Requirement**

A. Pursuant to Executive Order No. 24, this section should be included in the terms and conditions of all contracts let by the Governor's Cabinet Agencies and the Office of the Governor:

By Executive Order 24 and N.C.G.S. § 133-32, it is unlawful for any vendor or contractor ( i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.

- B. To be added near the signature portion of all contracts let by the Governor's Cabinet Agencies and the Office of the Governor:

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

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

[These requirements apply to all contracts and subcontracts in excess of \$25,000 and to all contracts for federally-required audit services irrespective of contract amount, and to contracts at any tier that must be approved by an FTA official irrespective of contract amount.]

- A. 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, 2 C.F.R. § 200.213, and 2 C.F.R. Part 200 Appendix II (I). 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.
- B. The Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract (which includes review of SAM at [sam.gov](https://sam.gov), if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200) and are not presently declared by any Federal department or agency to be: (1) debarred from participation in any federally assisted Award; (2) suspended from participation in any federally assisted Award; (3) proposed for debarment from participation in any federally assisted Award; (4) declared ineligible to participate in any federally assisted Award; (5) voluntarily excluded from participation in any federally assisted Award; or (6) disqualified from participation in any federally assisted Award.

- C. The Contractor agrees that it will not enter into any “covered transaction” (as defined at 2 C.F.R. §§ 180.220 and 1200.220) with any “third party participant” (as defined in FTA’s Master Agreement, as may be updated or amended) that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions except as otherwise authorized by applicable Federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third Party Participants. Contractor further agrees that it will review the Federal Government’s “System for Award Management — Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by USDOT regulations (2 C.F.R. part 1200).
- D. The Procuring Agency will be reviewing all third party contractors under the “System for Award Management” at <https://www.sam.gov/> before entering into any contracts.
- E. If the Procuring Agency or NCDOT suspends, debars, or takes similar action against a contractor or subcontractor, the NCDOT will provide immediate written notice to the: (1) FTA Regional Counsel for the Region in which the NCDOT is located or implements the Project; (2) FTA Headquarters Manager that administers the Grant; (3) FTA Chief Counsel; and (4) NCDOT/Public Transportation Division.

***The requisite “Debarment and Suspension Certification,” which is included as ATTACHMENT B (attach additional statement if necessary), must be executed for contracts of \$25,000 or more and be submitted with the bid.***

## **11. Lobbying**

[These requirements apply to contracts and subcontracts in excess of \$100,000.]

- A. Any Contractor who applies or bids for an award of \$100,000 or more shall certify that it has not used and will not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352, as required by 49 C.F.R. part 20, “New Restrictions on Lobbying.” Contractors shall obtain the certification required by 49 C.F.R. part 20 from any and all subcontractors at any tier.
- B. Contractors shall complete and submit the disclosure form required by 49 C.F.R. part 20, “New Restrictions on Lobbying” (Standard Form LLL, “Disclosure Form to Report Lobbying”), if the Contractor has made or has agreed to make any payment using non-Federal funds (to include profits from any covered Federal action), which would be prohibited under paragraph (1) of this clause if paid for with Federal appropriated funds. Contractors shall obtain such disclosures, if required, from its subcontractors at any tier for whom a contract in excess of \$100,000 is contemplated. Such disclosures shall be forwarded from tier to tier up to Procuring Agency.
- C. Contractors shall complete and submit a disclosure form at the end of each calendar quarter in which there occurs an event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously submitted in accordance with paragraph (2) above. An event that materially affects the accuracy of the information reported includes: (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or (c) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal action. Contractors shall obtain such disclosures, if required,

from its subcontractors at any tier for whom a contract in excess of \$100,000 is contemplated. Such disclosures shall be forwarded from tier to tier up to Procuring Agency.

- D. Contractors shall include this clause in each subcontract and require subcontractors to flow down this clause to each lower-tier subcontractor.

***The requisite "Lobbying Certification," which is included as ATTACHMENT C (attach Standard Form-LLL if necessary), must be executed for contracts of \$100,000 or more and be submitted with the bid.***

## **12. Program Fraud and False or Fraudulent Statements or Claims and Related Acts**

The Program Fraud clause requirements extend to all third party contractors and their sub-contracts at every tier.

- A. 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 activities in connection with 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 apply, the Contractor also 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, as amended, on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes 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.
- C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **13. Clean Air Act and Federal Water Pollution Control Act**

[These requirements apply to all contracts and subcontracts in excess of \$150,000.]

Contractor shall: (A) 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 – 1388); (B) will not use any violating facilities; (C) will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities" to the Procuring Agency; and (D) understands and agrees that the Procuring Agency will report violations of use of prohibited facilities to FTA.

## **14. Environmental Protection**

Contractor shall comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

- A. National Environmental Policy Act. The Contractor shall comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (a) federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; (b) the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508; (c) joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622; (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note; and (e) other federal environmental protection laws, regulations, and requirements applicable to the project. The Contractor shall follow federal guidance to the extent that the guidance is consistent with applicable authorizing legislation, which may include: (a) joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013; (b) joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and (c) other federal environmental guidance applicable to the Contractor.
- B. Other Environmental Federal Laws. Contractor shall comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order No. 11988, as amended, "Floodplain Management."

## **15. Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, 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.

## **16. Recycled Products**

[These requirements apply to all contracts and subcontracts involving the purchase of items designated by the EPA (that contain the highest percentage of recovered materials practicable) in excess of \$10,000 (or if the value of the quantity of such items acquired during the preceding fiscal year exceeded \$10,000). See 40 C.F.R. part 247 for federal designation of items.]

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

## **17. Geographic Preference**

Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in evaluation or award of bids or proposals, except where applicable Federal statutes expressly mandate, permit, or encourage geographic preference. This does not preempt State licensing laws.

**18. Exclusionary or Discriminatory Specifications**

The Contractor agrees that it will comply with the requirements of 49 U.S.C. § 5325(h) by refraining from using any funds derived from FTA in performance of this contract to support subcontracts using exclusionary or discriminatory specifications or requirements.

**19. Protest Procedures**

To ensure that protests are received and processed effectively, the Owner shall provide written bid protest procedures upon request. In all instances, information regarding the protest shall be disclosed to the N.C. Department of Transportation (NCDOT). All protest requests and decisions must be in writing. A protester must exhaust all administrative remedies with the Owner before pursuing remedies through the NCDOT. Reviews of protests by the NCDOT will be limited to the Owner's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to the NCDOT must be received by the Department within three (3) working days of the date the protester knew or should have known of the violation.

The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of NCDOT's final decision. Likewise, the protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has identified other grounds for appeal to FTA. For example, other grounds for appeal include the recipient's failure to have or failure to comply with its protest procedures or failure to review the protest.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

**20. North Carolina E-Verify Requirements**

To ensure compliance with the E-Verify requirements of the General Statutes of North Carolina, all contractors, including any subcontractors employed by the contractor(s), by submitting a bid, proposal or any other response, or by providing any material, equipment, supplies, services, etc., attest and affirm that they are aware and in full compliance with Article 2 of Chapter 64, (N.C.G.S. 64-26(a)) relating to the E-Verify requirements by executing and submitting the E-verify Affidavit included in this Invitation for Bids.

***The requisite "E-Verify Affidavit," which is included as ATTACHMENT D, must be executed and be submitted with the bid.***

**21. Metric System**

To the extent required by U.S. DOT or FTA, the Contractor agrees to use the metric system of measurement in its contract activities as may be required by 49 U.S.C. § 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a; and other regulations, guidelines and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

**22. Iran Divestment Act**

[These requirements apply to all contracts over \$1,000.]

Pursuant to N.C.G.S. § 147-86.60, a company that is identified on a list created by the State Treasurer pursuant to N.C.G.S. § 147-86.58 as a company engaging in investment activities in Iran is ineligible to contract with the State of North Carolina or any political subdivision of the State of North Carolina. By submitting a Bid, Contractor affirms that it is not on the Final Divestment List as created by the NC State Treasurer pursuant to N.C.G.S. § 147-86.58 and will not utilize any subcontractor that is identified on the Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website: [www.nctreasurer.com/iran](http://www.nctreasurer.com/iran).

**23. Divestment from Companies Boycotting Israel Certification**

As of the date of this contract, the Contractor certifies that it is not listed on the Final Divestment and Do-Not-Contract List – Restricted Companies Boycotting Israel created by the State Treasurer pursuant to N.C.G.S. § 147-86.81 and that the Contractor will not utilize any subcontractor found on the State Treasurer's Final Divestment and Do-Not-Contract List. All individuals signing this contract on behalf of the Contractor certify that they are authorized by the Contractor to make this certification.

**PRODUCT, MATERIALS, DOMESTIC PREFERENCE,  
AND ROLLING STOCK SPECIFIC REQUIREMENTS**

**24. Buy America**

[These requirements apply to contracts over \$150,000 if they involve the purchase of iron, steel, and manufactured products. 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.]

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.

The Buy America requirements flow down from FTA to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The Contractor shall include this requirement in all subcontracts.

***The requisite "Buy America Certification," which is included as ATTACHMENT E, must be executed for contracts over \$150,000 if they involve the purchase of iron, steel, and/or manufactured products. The certification must be submitted with the bid. BIDS OR OFFERS THAT ARE SUBMITTED WITHOUT THE COMPLETED BUY AMERICA CERTIFICATION MUST BE REJECTED AS NONRESPONSIVE. BIDDERS ARE ADVISED THAT SUBMISSION OF BOTH CERTIFICATIONS WITH THE BID IS ALSO CONSIDERED NONRESPONSIVE AND WILL RESULT IN REJECTION OF THE BID.***

**25. Build American, Buy America (Construction Materials)**

[These requirements apply to contracts for infrastructure projects.]

The Contractor agrees to comply with the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 C.F.R. part 184, and the provisions of those acts and their implementing guidance and regulations are hereby incorporated by reference into this contract. Contractor shall ensure that all relevant provisions of the Buy America Act and



the Build America, Buy America Act and their implementing guidance and regulations are incorporated into every applicable subcontract and supplier agreement.

***The requisite “Build America, Buy America (Construction Materials) Certification,” which is included as ATTACHMENT I, must be executed for contracts for infrastructure projects or if construction materials may be used on a project. The certification must be submitted with the bid.***

## **26. Cargo Preference - Use of United States-Flag Vessels**

[These requirements apply to all contracts involving equipment, material, or commodities that may be transported by ocean vessels.]

If the Contractor or any subcontractor will transport equipment, material, or commodities by ocean vessel, the Contractor agrees that:

- A. At least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this contract, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available (46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 C.F.R. part 381).
- B. Within 20 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 46 C.F.R. § 381.7(a)(1) shall be furnished to both the Procuring Agency (through the Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- C. The Contractor shall 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.

## **27. Fly America**

[These requirements apply to contracts and subcontracts involving the transportation of persons or property by air between a place in the United States and a place outside of the United States, or between places outside the United States, when the FTA will participate in the cost of such air transportation. First tier contractors who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.]

- A. As used herein: “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. Ch. 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) and U.S. General Services Administration (U.S. GSA) regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143, 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. 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].

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

**28. Prohibited Telecommunications Services, Equipment and Systems**

Pursuant to Public Law 115-232, Section 889, and 2 C.F.R. part 200, including § 200.216 and § 200.471, the Procuring Agency is prohibited from procuring or obtaining equipment, services, or systems that use “Covered Telecommunications Equipment or Services” as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, Section 889, “Covered Telecommunications Equipment or Services” is: (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (2) 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); (3) Telecommunications or video surveillance services provided by such entities or using such equipment; and (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. The Contractor shall not use or provide to the Procuring Agency Covered Telecommunications Equipment or Services in the performance of this contract. If Contractor later learns that Covered Telecommunications Equipment or Services have been supplied, installed, or utilized under this contract, the Contractor shall immediately inform the Procuring Agency in writing. The Procuring Agency may treat such occurrence as an event of default and may require the Contractor to promptly replace such prohibited service, equipment and systems at the Contractor’s sole cost or take such other actions pursuant to this contract.

***The requisite “Prohibited Telecommunications Services Certification,” which is included as ATTACHMENT J, must be executed and be submitted with the bid.***

**29. National Intelligent Transportation Systems Architecture and Standards**

[These requirements apply only to contracts for National Intelligent Transportation System projects.]

To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455, January 8, 2001, and all other federal guidance.

**30. Intellectual Property/Patent Rights & Rights in Data.**

[These requirements apply to contracts for the performance of experimental, developmental, or research work.]

- A. Patent Rights. Contractor shall grant the Procuring Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 5 U.S.C. § 200, et seq., 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.
- B. Copyrights. FTA reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award for Federal purposes and to authorize others to do so. This includes the right to require that such works are made available through FTA-designated public access repositories.
- C. Rights in Data. Where FTA provides Federal assistance to support the costs of research, development, demonstration, or a special studies project, the Federal Government reserves a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes": (1) any subject data developed under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright purchased by Contractor using federal assistance in whole or in part by FTA. 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.
- (1) Publication Restrictions. Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may 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, unless Contractor is an institution of higher education, in which case these publication restrictions do not apply. For purposes of this Contract, the term "subject data" means recorded information, whether or not copyrighted, 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.
- (2) Distribution of Data. Except for contracts for adaptation of automatic data processing equipment or data provided in support of an FTA capital project or unless FTA determines otherwise, Contractor agrees to permit FTA to make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- (3) Export Control. Data developed during the course of this Contract that is subject, directly or indirectly, to U.S. Export Control regulations may not be exported to any countries or any foreign persons without first obtaining necessary federal license(s) and complying with any applicable U.S. Department of Commerce, Bureau of Industry and Security, "Export Administration Regulations," specifically, 15 C.F.R. parts 730, et seq., U.S. Department of State, U.S. Department of the Treasury, and U.S. Department of Defense

- D. Indemnification. Unless prohibited by state law, upon request by the Federal Government, Contractor shall 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 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. 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.
- E. Interpretation. Nothing contained in this provision 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.
- F. Exempt Data. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
- G. Contractor shall include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

**31. Federal “\$1 Coin” Requirements**

[These requirements apply to contracts for the procurement of property that requires to use of coins or currency in public transportation service or supporting service.]

Contractor agrees to comply with Section 104 of the President \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), which requires that equipment and facilities be fully capable of accepting and dispensing \$1 coins when coins or currency are required to use that equipment or those facilities.

**32. Protection of Human Subjects and Animals**

[These requirements apply to contracts involving the use of human subjects or animals.]

Contractor agrees to comply with: **(A)** the National Research Act, 42 U.S.C. § 289, et seq., and U.S. DOT regulations, “Protection of Human Subjects,” 49 C.F.R. part 11, when providing services involving the use of human subjects; and **(B)** the Animal Welfare Act, 7 U.S.C. § 2131, et seq., and U.S. Department of Agriculture regulations, “Animal Welfare,” 9 C.F.R. subchapter A, parts 1 – 4, when providing services involving the use of animals.

## **CIVIL RIGHTS, DISADVANTAGED BUSINESS ENTERPRISE, AND EMPLOYEE PROTECTION REQUIREMENTS**

### **33. Civil Rights Laws and Regulations**

The Procuring Agency must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless the Procuring Agency or federal program, including any Indian Tribe or Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements. The Contractor shall include this provision in every subcontract awarded at every tier and shall require subcontractors to flow down this provision to each lower tier subcontractor.

#### **A. Nondiscrimination in Federal Public Transportation Programs.**

- (1) The Contractor must prohibit: (a) discrimination based on race, color, religion, national origin, sex (including sexual orientation), disability, or age; (b) exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332; (c) denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; and (d) discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
- (2) The Contractor must follow the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance. However, FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its agreement supported with federal assistance under the Tribal Transit Program.

#### **B. Nondiscrimination – Title VI of the Civil Rights Act.**

- (1) The Contractor must prohibit discrimination based on race, color, or national origin.
- (2) The Contractor must comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq.; (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, including any amendments thereto; and (c) Federal transit law, specifically 49 U.S.C. § 5332.
- (3) The Contractor must follow: (a) the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance; (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3; and (c) all other applicable federal guidance that may be issued.

#### **C. Equal Employment Opportunity.**

- (1) *Federal Requirements and Guidance.* Contractor must prohibit discrimination based on race, color, religion, sex, sexual orientation, or national origin. Contractor must also comply with: (a) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; (b) Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, et seq.; (c) Federal transit law, specifically 49 U.S.C. § 5332; (d) FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit

Administration Recipients;" and (e) other federal guidance pertaining to EEO laws, regulations, and requirements.

- (2) *Indian Tribe*. Contractor recognizes that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer."

**D. Nondiscrimination – Disability, Age, Sex.**

- (1) *Disability*. Contractor must comply with federal prohibitions against discrimination based on disability, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; (b) the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq.; (c) the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, et seq.; (d) Federal transit law, specifically 49 U.S.C. § 5332; (e) other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities; (f) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37; (g) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27; (h) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. part 38; (i) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39; (j) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35; (k) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36; (l) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630; (m) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, subpart F; (n) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194; (o) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609; (p) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance," and (q) other applicable federal civil rights and nondiscrimination regulations and guidance.

- (2) *Age*. Contractor must comply with federal prohibitions against discrimination based on age, including: (a) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634; (b) U.S. EEOC regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625; (c) the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, et seq.; (d) 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 (e) Federal transit law, specifically 49 U.S.C. § 5332.

- (3) *Sex*. Contractor must comply with federal prohibitions against discrimination based on sex, including: (a) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, et seq.; (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25; and (c) Federal transit law, specifically 49 U.S.C. § 5332.

- E. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.** To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any

amendments thereto.

### 34. Contracting with Disadvantaged Business Enterprises

**This provision is subject to and will be enforced consistent with the U.S. Department of Transportation's Interim Final Rule, Disadvantaged Business Enterprise Program and Disadvantaged Business Enterprise in Airport Concessions Program Implementation Modifications, 90 Fed. Reg. 47969 (Oct. 3, 2025).**

The Procuring Agency has established a Disadvantaged Business Enterprise (DBE) Program pursuant to 49 C.F.R. part 26. The requirements and procedures of Purchaser's DBE Program are hereby incorporated by reference into this contract. The Contractor shall ensure that compliance with the Procuring Agency's DBE Program and the requirements of 49 C.F.R. part 26 be included in any and all subcontracts entered into which arise out of or are related to this contract. Contractor shall include this provision in every subcontract awarded at every tier and shall require subcontractors to flow down this provision to each lower tier subcontractor.

- A. The Contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 C.F.R. part 26, including any amendments thereto, in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements shall be considered a material breach of this contract and may be grounds for termination of this contract, or other such remedy as Purchaser deems appropriate, which includes but is not limited to withholding monthly payments, assessing sanctions, liquidated damages, and/or disqualifying Contractor from future bidding as non-responsible.
- B. The Procuring Agency encourages prime contractors on federally assisted contracts to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and to make reasonable efforts to use these institutions.
- C. Contractor shall pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after Contractor's receipt of payment for that work from the Procuring Agency. In addition, the following restrictions/requirements may apply:
  - (1) The Contractor may not hold retainage from its subcontractors; or
  - (2) The Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed; or
  - (3) The Contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Procuring Agency and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- D. If subcontracts will be let under this contract, Contractor shall take the affirmative steps listed in 2 C.F.R. § 200.321, which addresses contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.

***The requisite "Bidders List Form," which is included as ATTACHMENT K, must be completed and submitted with the bid.***

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

[These requirements apply to all contracts (not involving construction) in excess of \$100,000 that involve the employment of mechanics or laborers.]

- A. 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.
- B. The Contractor shall include this provision in every subcontract awarded at every tier and shall require subcontractors to flow down this provision to each lower tier subcontractor.

**36. Safe Operation of Motor Vehicles**

- A. Seat Belt Use. 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 Contractor or the Procuring Agency.
- B. Distracted Driving. Contractor shall 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 contract. Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- C. Contractor shall include this provision in every subcontract awarded at every tier and shall require subcontractors to flow down this provision to each lower tier subcontractor.

**37. Trafficking in Persons**

- A. Contractor and its subcontractors or their employees shall not: (A) engage in severe forms of trafficking in persons, as defined Section 103 of the Trafficking Victims Protection Act of 2000 (“TVPA”), as amended, 22 U.S.C. § 7102; (B) procure a commercial sex act, as defined Section 103 of the TVPA, as amended, 22 U.S.C. § 7102; or (C) use forced labor, defined as 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, in the performance of the contract or permit the use of forced labor in the performance of any subcontract hereunder.
- B. Contractor shall inform the Procuring Agency immediately of any information Contractor receives from any source alleging a violation of a prohibition in this section. The Procuring Agency may terminate this contract for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to the Procuring Agency.



## CONTRACT ADMINISTRATION, RECORDS, REMEDIES, AND RISK ALLOCATION

### 38. Notification Required

[These requirements apply to all contracts and subcontracts in excess of \$25,000.]

Contractor shall notify Purchaser of any and all matters that Contractor knows or reasonably should know may affect Purchaser or any of its funders' interests, including the Federal Government's interests. This notification requirement includes, but is not limited to, current or prospective legal matters such as an actual or potential major dispute, breach, default, litigation, naming of Purchaser or the Federal Government as a party to litigation, or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include but are not limited to, the Federal Government's interests in the contract, the underlying Purchaser/FTA Agreement, and any amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. The Contractor agrees to include this clause in every subcontract awarded at every tier. The Contractor shall further notify Purchaser of any potential fraud, waste, or abuse occurring on the contract or Project.

If there is credible evidence that a Third Party Participant has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Federal funding, notification of FTA is required. If a legal matter as described above emerges, the Owner must promptly notify the NCDOT, which in turn will notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or FTA Regional Counsel for the Region IV.

### 39. Access to Records and Reports and Record Retention

The record keeping and access requirements extend to all third party contractors and their contracts at every tier. Under 49 U.S.C. § 5325(g) and 2 C.F.R. § 200.336, FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. chapter 53.

The State of North Carolina, Office of the State Auditor, now requires that all records now be retained for a period of **five (5) years** after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Procuring Agency, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

- 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 shall provide sufficient access to the U.S. Secretary of Transportation, the Comptroller General of the United States, the FTA, the Procuring Agency,

and their duly authorized representatives to inspect and audit records and information, including such records and information the Contractor may regard as confidential or proprietary, related to performance of this contract as reasonably may be required in accordance with 49 U.S.C. § 5325(g) and 2 C.F.R. part 200.

- D. Access to the Sites of Performance. The Contractor shall permit the FTA, the Procuring Agency, and their duly authorized representatives access to the sites of performance of this contract as reasonably may be required and to make site visits in accordance with 2 C.F.R. part 200. Contractor shall permit the U.S. Secretary of Transportation, Comptroller General of the United States, the FTA, the Procuring Agency, and their duly authorized representatives to inspect all Project work, materials, payrolls, invoices, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the project, as required by 49 U.S.C. § 5325(g) and 2 C.F.R. § 200.336.

#### **40. Section 508 Compliance**

Any reports or information that will be provided to US DOT or any other Federal agency must comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194.

#### **41. Protection of Sensitive Security and Other Sensitive Information**

The Contractor shall protect, and shall take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of this contract to ensure compliance with: (A) the Homeland Security Act, as amended, specifically 49 U.S.C. § 40119(b), and U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. part 15; and (B) the Aviation and Transportation Security Act, as amended, 49 U.S.C. § 114(r), and U.S. Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. part 1520. The Contractor shall include this provision in every subcontract awarded at every tier and shall require subcontractors to flow down this provision to each lower tier subcontractor.

#### **42. Violation and Breach of Contract; Rights and Remedies**

[These requirements apply to contracts and subcontracts in excess of the simplified acquisition threshold (currently set at \$350,000).]

- A. Rights and Remedies of the Owner. The Owner shall have the following rights in the event that the Owner 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.
- B. Rights and Remedies of the Contractor. Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this contract, which may be committed by the Owner, the Contractor expressly agrees that no default, act or omission of the Owner shall constitute a material breach of this contract, entitling Contractor to cancel or rescind the contract (unless the Owner directs Contractor to do so) or to suspend or abandon performance.

- C. Remedies. Substantial failure of the Contractor to complete the Project in accordance with the terms of this contract will be a default of this contract. In the event of a default, the Owner 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 contract by the Contractor before the Owner takes action contemplated herein, the Owner will provide the Contractor with sixty (60) days written notice that the Owner 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.

**43. Termination or Cancellation of Contract**

[These requirements apply to all contracts in excess of \$10,000 and extend to all third party contractors and their contracts at every tier, as well as subrecipients and their contracts at every tier.]

- A. Termination for Convenience. The Owner may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Owner'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 the Owner to be paid the Contractor. If the Contractor has any property in its possession belonging to Owner, the Contractor will account for the same, and dispose of it in the manner the Owner directs.
- B. Termination for Default (Breach or Cause).
- (1) If the Contractor does not deliver services in accordance with the contract delivery schedule, or if the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Owner 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.
  - (2) If it is later determined by the Owner that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Owner, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.
  - (3) The Owner, 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 Owner'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 Owner setting forth the nature of said breach or default, Owner 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 Owner from also pursuing all available remedies against Contractor and its sureties for said breach or default.
  - (4) In the event that Owner elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Owner shall not limit Owner's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

#### 44. Resolution of Disputes

[These requirements apply to contracts and subcontracts in excess of the simplified acquisition threshold (currently set at \$350,000).]

- A. Disputes. Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Owner. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of the Owner. 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 authorized representative of the Owner shall be binding upon the Contractor and the Contractor shall abide by the decision.
- B. Alternative Dispute Resolution. The Owner and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the Owner and the Contractor's organization. In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner. Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the contract, and in accordance with the Owner's direction or decisions made thereof.
- C. Performance during Dispute. Unless otherwise directed by the Owner, the Contractor shall continue performance under this contract while matters in dispute are being resolved.
- D. Claims for Damages. Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- E. Remedies. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Owner and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Owner is located.
- F. Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### 45. Hold Harmless

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Owner of this contract and its officers, agents, and employees acting within

the scope of their official duties against any liability, including all claims, losses, costs and expenses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor or subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

The Contractor represents and warrants that it shall make no claim of any kind or nature against the Owner or its agents who are involved in the delivery or processing of contractor goods to the Owner. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

## **OPERATIONS AND MAINTENANCE ACTIVITIES**

### **46. Public Transportation Employee Protective Arrangements**

[These requirements apply to contracts for transit operations performed by employees of contractors and subcontractors recognized by FTA to be transit operators.]

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

- A. U.S. DOL Certification. To the extent that FTA determines that this Contract or any Amendments thereto involve public transportation operations financed in whole or in part with Federal assistance, Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL Letter. The requirements of this subsection (A), however do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (B) and (C) of this provision.
- B. Special Warranty. If the Contract involves public transportation operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- C. Special Arrangements. If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S.

DOL Letter.

- D. Contractor shall include the substance of this provision in each subcontract that may involve operating public transit services.

**47. Operating Public Transportation**

[These requirements apply to contracts for operating public transportation service.]

- A. Charter Service. Contractor agrees that neither it nor any subcontractor will engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. §§ 5323(d), (g), and (r), FTA regulations, “Charter Service,” 49 C.F.R. part 604, any other federal charter service regulations, federal requirements, or federal guidance. Contractor acknowledges that FTA may require corrective measures or impose remedies on the Procuring Agency or Contractor if Contractor engages in a pattern of violations of FTA’s Charter Service regulations.
- B. School Bus Operations. Contractor agrees that neither it nor any subcontractor will engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit law, 49 U.S.C. § 5323(f), FTA regulations, “School Bus Operations,” 49 C.F.R. part 605, and any other applicable Federal “School Bus Operations” laws, regulations, requirements, or applicable Federal guidance, and also that neither it nor any subcontractor will use federally funded equipment, vehicles, or facilities when operating exclusive school bus service under an allowable exemption. Contractor acknowledges that violations of FTA’s school bus laws, regulations, or requirements may result in the imposition of remedial measures by FTA or FTA barring the Procuring Agency or Contractor from receiving federal transit assistance.
- C. Contractor shall include the substance of this provision in each subcontract that may involve operating public transit services.

**48. National Transit Database Reporting**

- A. As a condition of benefitting from federal assistance for public transportation operations, Contractor and its subcontractors must:
  - (1) Facilitate compliance with 49 U.S.C. § 5335(a), which authorizes the National Transit Database (NTD);
  - (2) Conform to the NTD reporting system and the Uniform System of Accounts and Records;
  - (3) Comply with FTA regulations, “Uniform System of Accounts and Records and Reporting System,” 49 C.F.R. part 630;
  - (4) Report when required to the National Transit Database in accordance with FTA regulation 49 C.F.R. part 630, “National Transit Database,” and applicable FTA instructions: (a) any information relating to a transit asset inventory or condition assessment; and (b) such other information as FTA may require;
  - (5) Comply with any other applicable reporting regulations, and requirements; and
  - (6) Follow FTA guidance.
- B. Contractor and its subcontractors must facilitate compliance with 49 C.F.R. part 630 and report when required (1) any data on assaults on transit workers; and (2) any data on fatalities that result from an impact with a bus.

#### **49. Motor Carrier Safety**

[These requirements apply to contracts for bus service operations.]

A. Financial Responsibility. Contractor shall comply with the economic and insurance registration requirements of:

- (1) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 C.F.R. part 387, if Contractor is:  
(a) engaged in operations requiring compliance with 49 C.F.R. part 387, (b) engaged in interstate commerce, and (c) not within a defined commercial zone; and
- (2) Provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance required to be obtained to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.

B. U.S. FMCSA Requirements. Contractor shall comply with:

- (1) Safety requirements of U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Federal Motor Carrier Safety Regulations," 49 C.F.R. parts 390 – 397, to the extent applicable; and
- (2) Driver's license requirements of U.S. FMCSA regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 C.F.R. part 383, and "State Compliance with Commercial Driver's License," 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements," 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

#### **50. Substance Abuse (Drug & Alcohol Testing)**

[These requirements apply to contracts with contractors who perform safety-sensitive functions, as defined in 49 C.F.R. part 655.4, "Definitions."]

- A. Contractor shall establish and implement a drug and alcohol testing program that complies with "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 C.F.R. part 40) and "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" (49 C.F.R. part 655), produce any documentation necessary to establish its compliance with parts 655 and 40, and permit any authorized representative of the United States Department of Transportation or its operating administrations or the North Carolina Department of Transportation, 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 49 C.F.R. part 40 and review the testing process.
- B. Contractor shall submit for review and approval a copy of its substance abuse prevention policy developed to implement its drug and alcohol testing program.
- C. Contractor shall certify annually its compliance with parts 655 and 40 and submit the Drug and Alcohol Management Information System (DAMIS) reports before March 15 to the FTA. To certify compliance, 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.

- D. Contractor shall require the inclusion of the language of this provision within subcontracts of all tiers involving the performance of a safety-sensitive function under the Contract.

## **51. Privacy Act**

Contractor agrees to:

- A. Comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract; and
- B. Include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## **52. Maintenance of Federally Funded Assets**

[These requirements apply to all contracts involving federally funded assets.]

Contractor shall comply with all FTA requirements for maintenance standards for FTA-funded assets and facilities, comply with FTA regulations, "Transit Asset Management" and "National Transit Database," 49 C.F.R. parts 625 and 630, and follow applicable federal guidance regarding asset management. Contractor shall maintain a written maintenance plan at all times.