

PROCUREMENT MANUAL
&
PROCUREMENT FORMS

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INTRODUCTION

State and federal regulations regarding procurement of goods and services are complex, detailed, and often change to reflect changes in legislation. It is very important that COAST conducts its procurements in a manner which is consistent with all pertinent federal regulations. This procurement manual has been developed to assist in acquiring goods and services funded by capital or operating grant programs.

PROCUREMENT OVERVIEW

Micro-Purchases: purchases/contracts that do not exceed $9,999.

FTA does not require these purchases to be competitive. Micro-purchases should be distributed equitably among qualified suppliers. The only documentation requirement is a determination in the file that the price is fair and reasonable and a description of how the recipient made its determination.

Small Purchases: purchases/contracts more than $10,000 but not exceeding $249,999.

The procurement process must be competitive, but requirements are less complicated. COAST must obtain at least two (2) quotations in writing.

Large Purchases: purchases equaling or exceeding $250,000.

The procurement process is more detailed and must include full and open competition, awarded by sealed invitation for bid (IFB) or request for proposal (RFP), and must adhere to the formal advertising process.

Files must be maintained on all procurement actions. Files must contain a "paper trail" which clearly documents the goods or services purchased, and the associated costs. The files must also document compliance with FTA requirements. FTA requires recipients to maintain procurement files and grant files for a period of not less than three years from the closing of the grant.

No contract will be written for, or extended beyond, 5 years without a memo to the file that documents the rationale for the contract length.

Guidance relied upon in the development of this Procurement Manual includes:

- Federal Acquisition Regulation (FAR), 48 CFR part 2, subpart 2.1
- 49 Code of Regulations (CFR) Part 18

- FTA Circular 4220.1F
- FTA Best Practices Procurement Manual (October, 2016)
- FTA Master Agreement
- American Public Transit Association's (APTA) Standard Bus Procurement Guidelines
- OM-18-18, "Implementing Statutory Changes to the Micro-Purchase and the Simplified Acquisition Thresholds for Financial Assistance" (June 20, 2018)

I. PURPOSE

The purpose of this manual is to establish guidelines relating to the purchase or sale of real and personal property, the granting of concessions, and the making of certain contracts by COAST, in accordance with U.S. Department of Transportation (U.S. DOT) Federal Transit Administration (FTA) documents, [FTA Circular 4220.1F, 49 C.F.R. 18, Master Agreement, and the Best Practices Procurement Manual (November 6, 2001) including updates]. In practices where there is a conflict between COAST's procurement manual and actual practice, the highest governing authority shall prevail.

II. ETHICS/STANDARDS OF CONDUCT

A. Purpose

Because it is imperative that officials and employees of COAST maintain the highest possible standards of ethical conduct in their transaction of public business, such standards must be clearly defined and published.

1. Personal Conflicts of Interest

a) Relationships

In all procurement matters relating to COAST, no COAST employee, official, board member or agent, including any member of an evaluation committee for a COAST project, shall participate in such activities as contract specifications, solicitations, selection, award, or administration of a contract between COAST and a private business if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award: (1) an employee, officer, board member, or agent of COAST; (2) any member of his or her immediate family; (3) his or her partner; (4) an organization that employs, or intends to employ, any of the above.

No employee, board member, officer, or agent of COAST will make investments or act for personal gain based upon special knowledge obtained, whether directly or inadvertently, as a result of employment with COAST.

No employee, board member, officer, or agent of COAST will have any relationship with or engage in any activity which might involve or lead to personal obligations which could impair the objectivity of such person's judgment, or imply to others that favoritism or obligations exist between such persons and third party contractors, or Subrecipients.

b) Gifts and Gratuities

It is COAST's policy that no employee, board member officer, or agent of COAST will solicit or accept, directly or indirectly, any gift, service, favor, employment, engagement, compensation, or anything of monetary value from a contractor, potential contractor, or parties to subagreements. Entertainment in any form must not be accepted if either party might feel an obligation or if a third party might infer that an obligation exists.

NO COAST official or employee may use his or her position to secure or grant unwarranted privilege, preferences, exemptions, or advantages for himself or herself, any member of his or her immediate household, any business entity in which he or she has a financial interest, or any other person.

2. Organizational Conflicts of Interest

An organizational conflict of interest exists when the contractor:

- Is unable, or potentially unable, to provide impartial and objective assistance or advice to the grantee due to other activities, relationships, contracts, or circumstances.
- Has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- Has, during the conduct of an earlier procurement, established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

It shall be COAST's policy in soliciting and contracting for goods and services to prevent any or apparent organizational conflicts of interest which could arise when the nature of work to be performed under a proposed contract would result in an unfair competitive advantage to the contractor in the award of future work.

3. Violations

Violation of COAST's ethics policy by any employee shall subject the individual to disciplinary action up to and including termination as determined by the Executive Director of COAST. Violation of this policy by contractors or their agents may be considered a breach of contract and shall subject such contractor or agent to action up to and including cancellation of contract and suspension and debarment from contracting with COAST. Violation of this policy by bidders or

potential contractors may be considered to make such bidder or proposer ineligible to bid or render a bid or proposal non-responsive.

B. Issuance of Standards of Conduct

COAST will issue these standards as a pre-employment orientation document to be read and signed by each employee involved in the procurement process. This signed form (Appendix V) will be placed into his/her personnel file. A copy of these standards will also be issued to each board member at the time of their appointment, or whenever an amendment is made.

III. DISADVANTAGED BUSINESS ENTERPRISE

It is the policy of COAST to actively encourage and assist Disadvantaged Business Enterprises (DBE) to participate competitively in COAST procurements actions. A DBE Liaison Officer (DBELO) is appointed by the Executive Director and reports directly to the Executive Director on all matters pertaining to the DBE program. The DBELO is responsible for DBE program coordination and enforcement. COAST's DBE Program is updated in accordance with 49 CFR Part 26.

IV. GENERAL PROCUREMENT PRACTICES

A. Awards to Responsible Contractors

COAST will make every effort to ensure that all procurement activities be entered into with responsible businesses, persons and contractors.

1. General Standards of Responsibility

To be determined responsible, all of the following requirements must be met:

- Financial resources adequate to perform the contract, or the ability to obtain them;
- Ability to meet the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- A satisfactory performance record;
- A satisfactory record of integrity and business ethics. The contractor must not be excluded or debarred from contracting opportunities as listen on the System for Award Management (SAM). COAST will document the procurement file with verification from SAM that the contractor is not on this list;

- The necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them;
- Compliance with applicable licensing and tax laws and regulations;
- The necessary production, construction, and technical equipment and facilities, or the ability to obtain them;
- Compliance with Equal Employment Opportunity and Disadvantaged Business Enterprise requirements; and
- Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

B. Review of Procurement Requests to Avoid Duplicate or Unnecessary Purchases

COAST has procurement procedures for Micro-purchases, Small purchases, and Large purchases. Senior managers complete micro and small purchases, and the Executive Director or Procurement Administrator conducts IFB/RFP/A&E purchases/contracts. Managers remain involved in purchases that affect their departments either through consultation with the Executive Director or serving on evaluation or oversight committees for larger procurements.

Because of the collaborative effort involved in conducting IFB/RFP/A&E, it is not possible to make duplicate purchases under this process. Because one person completes small and micro purchases in each functional area, there is no duplication of these purchases either.

Budget compliance is the responsibility of each department manager. Prior to the preparation of a purchase request, each department head must review his/her budget to ensure that funds are available.

Purchase orders, requisitions, or other written documentation of purchases are signed by Managers, Executive Director, or Board Chair as outlined in the requisition approval memo in Attachment B. This memo will be updated from time to time and kept on file with the most current version of the procurement policy. These individuals are accountable for meeting budgets in their departments and understand what their departments are responsible for procuring, which avoids overlap. COAST is a small, financially constrained organization and much attention is paid to purchasing only necessary items.

C. Full and Open Competition

All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

1. Unnecessary requirements placed on firms in order for them to qualify to do business;

2. Unnecessary experience and excessive bonding requirements;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive awards to any person or firm on retainer contracts;
5. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
6. The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and
7. Any arbitration action in the procurement process.

D. Competition; Non-Collusive Bids and Proposals

All purchases and sales, whether by formal advertising or otherwise, will be made on a competitive basis to the maximum practicable extent. In the event identical bids are submitted on any contract for the sale or purchase of property, the Executive Director will report such fact to COAST's General Counsel if there is any reason to suspect collusion.

E. Splitting Purchases

Purchases will not be split to place them in a smaller procurement category.

F. Purchase Orders

Purchase orders or other written documentation of purchases are required for all purchases as outlined in the Approval Authority Memorandum. A purchase order is not required for formal bids or proposals (IFB/RFP/A&E) which result in a signed contract. In an emergency, purchases may be authorized by the Executive Director to expedite the need to maintain or restore services and functional operations of the Cooperative Alliance for Seacoast Transportation. For all emergency purchases, a purchase order or written documentation must still be obtained the following business day or as soon as possible once the emergency has been addressed. Blanket purchase orders may be issued for up to one (1) year for some items such as legal and other regularly occurring operating expense funded services or goods that have been quoted or bid from a particular supplier.

G. Entering into a Contract

Only the Executive Director or Board Chair is authorized to enter into formal contracts with vendors.

H. Prohibition Against Geographic Preferences

COAST will conduct procurements in a manner that prohibits the use of geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Geographic location may be a selection criterion in procurements for Architectural & Engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

I. Formal Advertising

Formal advertising means purchases and sales by competitive bids and awards and involves publicizing the solicitation through broad distribution to prospective bidders and advertising in newspapers and trade journals.

J. Use of Technology/Electronic Commerce

COAST will utilize electronic commerce to the extent feasible. At this time, this includes receipt of written quotes for small and micro-purchases through electronic mail and publishing all large procurement not only in the newspaper but also through trade magazines.

K. Written Record of Procurement

FTA Circular 4220.1F requires that grantees maintain records detailing the history of each procurement. The basis for the contract price requirement applies to all procurements except micro-purchases. A template for a suggested Written History of Procurement can be found in Appendix B. At a minimum, the following must be included in the record:

1. The rationale for the method of procurement;
2. Selection of contract type;
3. Reasons for contractor selection or rejection;
4. The basis of the contract price

The FTA *Best Practices Procurement Manual* recommends the following procurement file documentation where appropriate:

1. Purchase request, acquisition planning information and other pre-solicitation documents
2. Evidence of availability of funds
3. Rationale for the method of procurement (negotiations, formal advertising)
4. Rationale for contract type
5. List of sources solicited

6. Independent cost estimate
7. State of work/scope of services
8. A copy of the budget or engineering estimates
9. A list of the bidders solicited or a memorandum explaining why the list of bidders was limited;
10. A copy of the invitation for bids, or request for proposal, including any drawings and specifications, or a reference thereto;
11. Copies of published notices of proposed contracts
12. Copy of the solicitation, and all addenda
13. Liquidated damages determination
14. An abstract of each offer or quote
15. A record of the Abstract of Bids
16. Contractors contingent fee representation and other certificates and representations
17. Contracting Officer's determination of contractor responsiveness and responsibility
18. Cost or pricing data
19. The basis of the contract price
20. Determination that price is fair and reasonable including an analysis of the cost and price data
21. Reasons for contractor selection or rejection
22. Notice of award
23. Notice to unsuccessful bidders or offerors and record of any debriefing
24. Record of any protest
25. Bid, Performance, Payment or other bond documents and notices to sureties
26. All pertinent correspondence;
27. Copies of all amendments or supplements to the contract, with supporting documents
28. Required insurance documents, if any
29. Any additional documents reflecting actions peculiar to the specific purchase or sale; and
30. Documentation of late bids.

COAST will keep all procurement records for the life of an asset or for at least three (3) years after the end of the contract.

V. METHODS OF PROCUREMENT

A. Micro-Purchases

Micro-purchases are purchases or contracts that do not exceed $9,999. As defined in U.S. DOT/FTA 4220.1F, Chapter VI, § 3a, purchases below that threshold may be made without obtaining competitive quotes, if COAST determines that the price is fair and reasonable. The Davis-Bacon Act must be applied to construction contracts over $2,000. Minimum

documentation requirements include determination that the price is fair and reasonable, and how this determination was made.

Whenever feasible, it is COAST's preference to document micro-purchases through entry of the procurement in the appropriate micro purchase log for each Fiscal Year. This log is located on the COAST local network on the "Procurement" Drive at <P:/Micro Purchases (under $9,999)/FY##/FY## micro purchase log.xlsx> The log is to include the following information:

1. Date of purchase
2. Item description
3. Vendor(s) solicited
4. Vendor price(s)
5. Lead time (if applicable)
6. Purchased (through which vendor)
7. Special notes

Ideally, at least two (2) telephone quotes or copies of at least two (2) written quotes, will be documented for such purchases. (See definition of a written quote). All Micro-purchases with only one quote must include documentation of a fair and reasonable price determination (see Appendix F), which must be signed, dated and indicate the reason for the determination checked off.

Any documentation must be maintained with the purchase records, ideally electronically. If a capital grant will be used to fund the purchase, copies of checks paid to vendors under that purchase will be made and stored with the purchase records.

Micro-purchases will be distributed equitably among qualified suppliers whose prices are determined to be fair and reasonable.

B. Small Purchases

Small purchases, as defined in U.S. DOT/FTA 4220.1F, Chapter VI, § 3b, are purchases of services, supplies, or other property that exceed $10,000, but not more than $249,999. COAST has adopted a maximum threshold of $249,999 for small purchases. Small purchases must be made by obtaining at least two (2) telephone or written quotes. Telephone quotes may be used for small purchases of fuel only up to $50,000. Purchases greater than $50,000 require written quotes.

Written quotes are documents submitted by a vendor to COAST in writing via fax, mail or electronic means. Once the written quotes are received and the responsive and responsible low bidder has been determined, a written documentation of the purchase must be completed.

Small purchases will be documented through entry of the procurement in the appropriate small purchase log for each fiscal year. This log is located on the COAST local network on the "Procurement" Drive at <P:/Small Purchases ($10,000 – $249,999)/FY##/FY## small purchase log.xlsx> The log is to include the following information:

1. Date of purchase
2. Item description
3. Vendor(s) solicited
4. Vendor price(s)
5. Lead time (if applicable)
6. Purchased (through which vendor)
7. Special notes

All other necessary documentation for each small purchase must be maintained with the purchase records, ideally electronically. If a capital grant will be used to fund the purchase, copies of checks paid to the vendors under that purchase will be made and stored with the purchase records.

C. Large Purchases

FTA Circular 4220.1F, Chapter VI states that purchases over $250,000 must provide for full and open competition. COAST's policy is that purchases over $250,000 use the large purchase procurement procedures. These contracts will be awarded by sealed bid or request for proposals, unless there is an explicit exception. Independent cost estimates must be made before receiving bids or proposals for all projects at or above the simplified acquisition threshold ($250,000), which may include bidders' estimates of the cost of the service or project.

1. General Requirements for all Large Purchases

a) Practices Deemed Restrictive of Competition

Practices deemed restrictive of competition, and therefore not allowable, include:

1. Unreasonable requirements placed on firms in order for them to qualify to do business;
2. Unnecessary experience and excessive bonding requirements;
3. Restraint of Trade: noncompetitive pricing between firms or between affiliated companies;
4. Noncompetitive awards to any person or firm on retainer contracts;
5. Organizational conflicts of interest (also applies to micro and small purchases);
6. Restrictive use of brand names (also applies to micro and small purchases);
7. Any arbitrary action in the procurement process (also applies to micro and small purchases);

8. Improper Prequalification: using prequalification procedures that conflict with the prequalification standards described in FTA Circular 4220.1F, Chapter VI, § 1.c;
9. Geographic preferences (with the exception of Architectural & Engineering services).

b) Prequalification

Prequalification lists are generally used in procurements that require lengthy evaluations to determine whether the product is satisfactory to certain standards. COAST may prequalify people, firms, and property if: (1) COAST ensures that all prequalification lists it uses are current; (2) COAST ensures that all prequalification lists it uses include enough qualified sources to provide for maximum full and open competition; and (3) COAST permits potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date).

1) Concurrent Pre-Qualification and Invitation for Bid

When a concurrent prequalification and invitation for bid process is used, both the bids and qualification information will be submitted by the bid due date. First the prequalification information is evaluated through the objective qualification process, which is defined in advance of any bid procurement requiring qualifications. Then bids are opened only from contractors who meet the qualification criteria. Unopened bids are returned to bidders who do not meet the qualification criteria.

c) Specifications, Plans, and Drawings

Plans, drawings, or specifications will state only COAST's actual minimum needs and will describe the property or serve to be acquired or sold, as the case may be, in a manner which will encourage maximum competition and eliminate, insofar as possible, any restrictive features which might limit acceptable offers to a relatively few bidders.

Where COAST's requirements for a commodity can only be estimated, and bids are to be submitted based upon that estimate, the specifications for the commodity may provide that COAST's requirements may vary within a given range from the estimate. However, a maximum and minimum amount should be stated to facilitate free and open competition. Specifications and drawings with references to brand names, or items manufactured by a single company, will be used to the minimum extent feasible.

COAST may not add quantities or options solely to allow them to be reassigned to another agency at a later date.

d) Purchase Description

The description may include a statement of the qualitative nature of the property or services to be acquired. When possible, descriptions of requirements should be in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or

minimum acceptable standards. Detailed product specifications should be avoided if at all possible.

e) "Brand Name or Equal"

When it is not possible or economical to provide a clear and accurate description of the technical requirements of the required property, a "brand name or equal" description may be used to define the performance or other salient characteristics of the property. Where a "brand name or equal" purchase description is used, the "salient characteristics" of the brand name must be described so that bidders may offer an "or equal" product. Known, acceptable products should be listed.

f) Alternate Articles

Invitations for bids and requests for proposals may provide for alternate bids or proposals on different articles or quantities of material (e.g., where two or more articles will be equally acceptable to COAST depending upon relative price); however, the alternate articles or quantities must be precisely described to assure that the same degree of competition is obtainable.

2. Invitation for Bid (IFB)/Sealed Bids (Formal Advertising)

In order that the sealed bidding process is feasible, COAST will make every effort to ensure that:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; The procurement lends itself to a firm fixed price contract when feasible, and the selection of the successful responsive and responsible bidder can be made principally on the basis of price;
- No discussion with bidders is needed; and
- There is sufficient time to prepare the bids prior to the date set for opening bids.

a) Contents of Invitation for Bid

Invitations for bids will contain all applicable information described, and any other information required for a particular purchase or sale.

In the case of purchases, the invitation for bids will contain the following information, if applicable to the purchase involved:

1. COAST's address and name of issuing activity;
2. Date of issuance;
3. Date, hour, and place of opening;
4. Description of the supplies or services to be furnished by the bidder in sufficient detail to permit full and free competition;
5. Time of delivery or performance requirements;
6. Permission, if any, to submit alternate bids;

7. Bid Guarantee, performance bond, and payment bond requirements, if any;
8. When considered necessary, a requirement that all bids must allow a period for acceptance by COAST of not less than a minimum period stipulated in the invitation for bids, and that bids offering less than the minimum stipulated acceptance period will be rejected (the minimum period so stipulated should be no more than reasonably required for evaluation of bids);
9. In cases where bidders are required to have special technical qualifications, a statement of special technical qualifications;
10. Directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference;
11. A statement that COAST reserves the right to reject any or all bids;
12. A statement that COAST reserves the right to cancel the invitation to bids, at its sole discretion, without penalty;
13. A statement that bids received after the exact time set for opening are "*late bids,*" and will not be considered for award, except in certain circumstances, such as it was determined that there was mishandling on COAST's part;
14. A statement that any modifications or bid withdrawals must be received prior to the set time for bid opening;
15. Standard contract provisions provided by the Federal Transit Administration, as applicable. COAST maintains a number of boilerplate instructions and conditions that contact general and special provisions for certain contract types;
16. In the case of sales, the invitation for bids will contain a description of the property to be sold by COAST in sufficient detail to permit full and free competition.

b) Methods for Soliciting Invitations for Bids

Specific methods used in solicitation of bids may include the following:

1. All purchases and sales in which formal advertising is required will be awarded only after publication of the essential details of the invitation for bids in a newspaper of general circulation in the metropolitan area at least two (2) weeks prior to the bid opening, longer if needed. Bidders will be allowed sufficient time to prepare bids before the date of bid opening.
2. A reasonable number of copies of invitations for bids, including specifications and other pertinent information, will be maintained at COAST's administrative office, unless the solicitation is being offered only in easily duplicated electronic form.

c) Receipt and Safeguarding of Bids

Receipt and safeguarding of bids will be as follows:

1. All bids (including modifications) received prior to the time of opening will be kept secure, and except as provided in the paragraph below, unopened;
2. If an invitation for bids is canceled, or if a bidder effectively withdraws his/her bid in accordance with the specifications set forth, all bids, or the withdrawn bid, as the case may be, will be returned to the bidder(s);
3. Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the Executive Director;
4. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his/her signature and position on the envelope, along with the date and time opened, as well as an explanation of why/how it was opened. The envelope will then be delivered to the Executive Director and will be resealed.

d) Opening of Bids

The following steps are taken in regard to the opening of bids:

1. The Executive Director will decide and set the time for public bid opening, and will so declare to those present. He/she or a designated official of COAST will then personally and publicly open all bids received prior to that time, and when practicable, read them aloud to the persons present, and have the bids recorded. The original of each bid will be carefully safe-guarded until the Abstract of Bids has been made and its accuracy verified.
2. Examination of bids by interested persons will be permitted if it does not interfere unduly with the performance of COAST's business. However, original bids will not be allowed to pass out of the hands of an official of COAST, unless a duplicate bid is not available for public inspection. In such cases, the original bid may be examined by the public only under the immediate supervision of an official of COAST, and under conditions which preclude possibility of a substitution, addition, deletion, or alteration in the bid.
3. Bids will not be opened if a protest is received within the time limits in the protest procedures within this document.

e) Recording of Bids

All legitimate bids will be abstracted and recorded on the "Abstract of Bids" document in Appendix G. Information recorded will include:

(1) An identification of the invitation for bids;
(2) Opening date;
(3) General description of the item/contract being purchased or sold;
(4) Names of each bidder;
(5) Prices bid; and
(6) Any other information required by bid evaluation.

When the items are too numerous to warrant the recording of all bids completely, each entry should be made of the opening date, general description of the material, item number, and the price bid. The abstract will be completed as soon as practicable after the bids have been opened. When all bids have been opened, the Executive Director will so certify on the abstract.

f) Award of Bids

In the awarding of bids, COAST will execute the following actions:

1. Unless all bids are rejected, award will be made by the Executive Director, within the time for acceptance specified in the bid, or extension thereof, to the responsible bidder whose bid, conforming to the invitation for bids, is the lowest bidder. Awards given to an "other than lowest bidder" are addressed in a succeeding section of this document.
2. Where the bids sought are for the award of concessions, COAST will accept the bid of that responsible and responsive bidder whose base bid and other material terms, conforming to the invitation for bids will be most advantageous to COAST, price and other factors considered.
3. In the event identical low bids are received, the Executive Director may, at his/her discretion, award the contract equally among the identical bidders, award the bid to the bidder who submitted his/her bid first, or may reject all bids and re-advertise. (See also section on Competition, Non-Collusive Bids and Proposals).
4. Awards will be made by mailing or presenting the bidder with a formal award. All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid will be clearly and accurately set forth (either expressly, or be referenced in formal award document), since the award is an acceptance of the bid, and the bid and award constitute a contract.

g) Amendment of Invitation for Bids

If, after issuance of an invitation for bids, but before the time for bid opening, it becomes necessary to make changes in quantity, specification, delivery schedules, opening dates, etc. or to correct a defective or ambiguous invitation, such change will be accomplished by issuance of an amendment to the invitation for bids. The amendment will be sent to everyone to whom invitations have been furnished. The following actions will be taken:

1. Before issuing an amendment to an invitation for bids, the period of time remaining until bid opening and the need for extending this period must be considered.
2. Where only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by facsimile, telephone or electronic mail. Such notification should be confirmed in the amendment.
3. Acknowledgement of receipt of the amendment of invitation for bids should be received from each bidder, either when received or on a form provided to be submitted with the bid.
4. Any information given to a prospective bidder concerning an invitation for bids will be furnished promptly to all other prospective bidders, as an amendment to the invitation, if such information is necessary to the bidders in submitting bids on the

invitation, or if the lack of such information would be prejudicial to uninformed bidders.

5. No award will be made on the invitation, unless such amendment has been issued in sufficient time, to permit all prospective bidders to consider such information in submitting, or modifying their bids.

h) Cancellation of Invitations Before Opening

COAST will include in all solicitations for invitations for bids, a statement that COAST reserves the right to cancel the solicitation without penalty, at its sole discretion. cancellations of an invitation for bids usually involves the loss of time, effort and money spent by COAST and bidders in carrying the bidding process up to the point of cancellation:

1. Invitations for bids should not be canceled unless cancellation is clearly in the public interest, such as where there is no longer a requirement for the supplies or services, or where amendments to the invitation would be of such magnitude that a new invitation is desirable.
2. When an invitation is canceled prior to bid opening, bids which have been received will be returned unopened to the bidders, and a notice of cancellation will be sent to all prospective bidders.
3. The notice of cancellation will identify the invitation for bid, briefly explain the reason for cancellation, and where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any future requirements for the type of material or services involved.

i) Modification or Withdrawal of Bids

Bids may be modified or withdrawn in writing, telecommunication, by facsimile, or by electronic mail. Modifications or withdrawals must be received by COAST no later than the exact time set for opening of bids. Acceptable procedures for modification or withdrawal of bids are as follows:

1. Modifications received by facsimile transmission or by printed electronic mail will be sealed in an envelope by an official of COAST who will write thereon the date and time of receipt and by whom, the invitation for bid number, and his/her signature. No information contained therein will be disclosed prior to the time set for bid opening.
2. A bid may be withdrawn in person by a bidder or his/her authorized representative, provided his/her identity is made known, and he/she signs a receipt for the return of the bid, but only if the withdrawal is prior to the exact time set for opening of bids.

j) Rejection of All Bids

COAST recognizes that the preservation of the integrity of the competitive bid system indicates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, or in the case of a sale, to that responsible bidder who made the highest responsive bid. Every effort will be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby preventing the unnecessary exposure of bid prices.

Invitations for bids may be canceled after opening but prior to award, and all bids rejected where the Executive Director determines in writing that:

1. Inadequate or ambiguous specifications were given in the invitation;
2. The supplies or services being purchased are no longer required;
3. All otherwise acceptable bids received are at unreasonable prices;
4. Reasonable evidence exists that bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
5. For other reasons, cancellation is clearly in the best interest of COAST.

k) Rejection of Individual Bids

Any bid which fails to conform to the essential requirements or specifications of the invitation for bids will be rejected, unless the invitation authorized the submission of alternate bids. Alternate bids must meet the requirements specified in the invitation. Other reasons for rejection of individual bids may include:

1. Any bid which fails to conform to the delivery schedule or alternates thereto stated in the IFB will be rejected as non-responsive.
2. Bids where the bidder attempts to impose conditions which would modify requirements of the IFB, or limit his/her liability to COAST, such practices may include:
    a. Attempts to protect himself/herself against future changes in conditions, such as increased costs, or the total possible costs to COAST cannot be determined;
    b. Fails to state a price and in lieu thereof, states that the price will be the "price in effect at time of delivery" or equivalent; or
    c. States a price but qualifies such price as being subject to the "price in effect at time of delivery", or equivalent. A low bidder may be requested to delete objectionable conditions from his/her bid, provided these conditions do not go to the substance, as distinguishable from the form of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid, where it affects price, quantity, quality, or delivery of the item offered.
    d. Any bid may be rejected if it is determined to not be responsible, or bidders determined to not be responsive.
    e. Low bids received for concerns determined to be not responsible, as stated in the section on Responsible Bidders, will be rejected.
    f. Where a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the IFB, the bid will be rejected.

The originals of all rejected bids, and any written findings with respect to such rejection, will be preserved in the contract file.

l) Disposition of Late Bids

Late bids which are not considered for award will be held unopened until after award, and then returned to the bidder, unless other disposition is requested, or agreed to by the bidder. An unidentified bid, however, may be opened solely for the purpose of identification. The following will, if available, be included in the contract file with respect to each late bid:

(1) A statement of the date and hour of mailing, filing, or delivery, as the case may be;
(2) A statement of the date and hour of receipt;
(3) The determination of whether or not the late bid was considered for award, with supporting facts;
(4) A statement of disposition of the late bid; and
(5) The envelope or covering, if the late bid was considered for award.

m) Minor Informalities or Irregularities in Bids

A minor informality is one which is merely a matter of form, or is some immaterial variation from the exact requirements of the invitation for bids, having no effect or merely a trivial or negligible effect on the price, quantity, quality, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to other bidders. The Executive Director will either give the bidder an opportunity to correct the deficiency, or waive any such deficiency, where it is to COAST's advantage.

n) Mistakes in Bids

After opening of bids, the Executive Director will examine all bids for mistakes. In cases of apparent mistakes, and in cases where there is reason to believe that a mistake may have been made, he/she will request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter will be processed in the manner set forth below. Such actions will be taken prior to award:

(1) Any clerical mistake apparent on the face of a bid may be corrected by the Executive Director, if he/she has first obtained from the bidder, verification of the bid actually intended. Examples of such apparent mistakes are:
   a. Obvious error in placing decimal point;
   b. Obvious reversal of price f.o.b. destination and the price f.o.b. factory;
   c. Obvious error in destination of unit.

Correction will be reflected in the award document.

The Executive Director, with the advice of COAST's General Counsel, is to make the following administrative determination in connection with mistakes in bids, other than apparent clerical mistakes, alleged after opening of bids and prior to award:

(1) Where an official of COAST knows, or has reason to suspect, that a mistake in a bid has been made, a "Request for verification in bid" may be submitted to assure that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder. In such case, a written request to the bidder that it verify its bid price will be prepared and submitted.
(2) Where the bidder requests permission to withdraw a bid, and clear and convincing evidence establishing the existence of a mistake, a determination permitting the bidder to withdraw his/her bid may be made. If the evidence is clear and convincing, as to the existence of a mistake, and as to the bid actually intended, and if the bid,

(whether corrected or uncorrected) is the lowest bid received, a determination may be made to correct the bid and not permit its withdrawal.

(3) Where the bidder requests permission to correct a mistake in his/her bid, and clear and convincing evidence establishes the existence of a mistake, and as to the bid actually intended, a determination permitting the bidder to correct the mistake may be made; provided that, in the event such correction would not result in displacing one or more lower bids. If the evidence of the mistake, and the bid actually intended are not ascertainable substantially from the invitation and bid itself as opposed to evidence brought to COAST in response to a request for verification, correction will not be allowed.

(4) If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his/her bid may be made.

(5) Where the evidence is not clear and convincing that the bid as submitted was not the bid intended, a determination may be made requiring that the bid be considered for award in the form submitted.

o) Contract Amendment and Change Order Policy

Change orders are amendments to a contract and may be required to adjust a contract quantity or performance period due to unanticipated conditions. Changes to contract agreements after award will be approved by the Executive Director. All orders must be documented in writing, be supported by a written justification including a cost or price analysis, and signed and dated by the authorized officials.

3. Request for Proposals (RFP)

Large purchases may be procured through competitive proposal/request for proposals, when conditions are not appropriate for the use of a sealed bid. This can include conditions when the property or services needed are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the important of basing contract award on factors other than price alone are present. In such cases, either a fixed price, or cost reimbursement type contract is awarded.

a) Publicizing the Proposal

Proposals will be advertised in metropolitan newspapers, trade magazines, COAST's website, COAST's Bidders List as well as solicitation from an adequate number of qualified sources.

b) Selection Criteria

COAST will list, in the request for proposals, the selection criteria. Price should always be a selection criterion.

COAST may list selection criteria in the request for proposals, but are not to reveal weights of each category. COAST must establish the priority, weights and scoring method on an internal document prior to the day the RFP becomes available to potential proposers.

c) Evaluation of Proposals

Proposals will be evaluated based on the evaluation criteria, not against other offers. Criteria for evaluation of proposals will be established prior to a request for proposals, and may include:

1. Responsibility criteria, such as financial, human, and physical capacity to perform the contract. Such criteria may include, but is not limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, and experience or past performance. (Refer to section 5.1 of the *FTA Best Practices Procurement Manual* – Responsibility of Contractor).
2. Technical criteria – may include the technical experience of the proposer, the suitability of the products or methods proposed for COAST's needs, or objective performance criteria (fuel efficiency, percent savings guaranteed, proven ridership increases, etc.).
3. Price criteria – price must be evaluated, unless the Brooks Act applies (where price is only considered after the most qualified proposer is selected for procurement of A&E services).
4. Awards will be made to the responsible firm whose proposal is most advantageous to COAST's program, with price and other factors considered.
5. Compliance criteria – will include responsiveness to proposal requirements.
6. Management criteria – may include the qualifications of the project managers, the budget and schedule performance proposed and recorded on past projects, and the projected effectiveness of the management plan proposed.

d) Award of Proposals

COAST will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed agreement.

Consideration will be given to such factors as contractor integrity, compliance public policy, record of past performance, and financial and technical resources. Additionally, as stated above, awards will be made to the responsible firm whose proposal is most advantageous to COAST's program with price and other factors considered.

e) Request for Revised Proposals

In the event COAST finds it necessary to revise an initial request for proposal because of deficiencies, the decision to do so will be approved by the Executive Director, and the deficiencies must be listed and explained.

1. A complete revised proposal, including price (except under the Brooks Act) will be requested from each offeror in the competitive.
2. Unless explicitly stated otherwise, the revised offer extinguishes the prior offer.
3. The proposer should identify all changes in the revised offer.

COAST may exercise the right to request revised proposals as many times as necessary in order to obtain the most advantageous offer.

f) Discussions and Clarifications (Negotiations)

COAST will exercise its right to hold discussions for clarifications with all offerors in the competitive range. At such time, negotiations and bargaining may be made that do not results in changes to the RFP criteria. At which time, the offeror will have an opportunity to revise or modify his/her proposal. The discussions and negotiations may initially be written or oral, with appropriate documentation following the discussions. Strict confidentiality in such cases will be maintained. Emphasis will be made known to the offeror that the name and number of proposals received is not normally considered a public record and need not be released to competitors or the public at large.

g) Request for Best and Final Offer

A best and final offer (BAFO) may be requested from each offeror in the competitive range at the conclusion of discussions (negotiations) with those offerors. If an offeror does not respond to the request, COAST may consider the most recent offer to be the best and final offer. The request for best and final offer will include:

1. Specific notice that discussions are concluded;
2. Notice that this is the opportunity for the offeror to submit a best and final offer;
3. A definite, common cutoff date and time that allows a reasonable opportunity for the preparation and submission of the best and final offer; and
4. Notice that the final offer must be received at the place designated by the time and date set in the request and is subject to any provisions dealing with the submissions, modifications, and withdrawals of proposals set forth in the solicitation.

Following receipt of the best and final offers, officials of COAST will them in accordance with the terms of the solicitation and recommend award in accordance with those terms. COAST will make every attempt to submit only one request for best and final offer, however, in the event additional technical or price/cost related issues surface as a result of the offerors' final submissions or other factors that preclude a reasonable justification for contractor selection and award, COAST may submit a request for subsequent best and final offers, as it may be clearly in the best interest of COAST.

h) Award Based on Initial Proposals

COAST may accept one of the initial proposals if it can be demonstrated that acceptance of the most favorable initial proposal without discussion will result in a fair and reasonable price. Solicitations for proposals will contain a notice that award may be made discussion of proposals received, and that proposals should be initially on the most favorable terms possible, from a price and technical standpoint.

i) Withdrawal of Proposal

In order to avoid frivolous offers, or offers submitted with the sole intention of casting light on other offers, the solicitation for the request for proposals will state a date and time by which offers must be submitted, and a period following that date during which offers remain firm.

Proposers will be allowed to withdraw or modify their proposals up to the due. However, it will also be stated that, after that date, all proposals are firm and cannot be withdrawn, regardless of whether the proposer has had second thoughts.

j) Debriefing Unsuccessful Offerors

COAST will maintain complete records on its award decision, and how it came to that decision. COAST will remain as objective as possible in making that decision. In the event a proposer was excluded from the competitive range, and requests a debriefing, the Executive Director, at his/her discretion will offer a candid explanation of the process. However, if COAST foresees that a dispute is probable, it is not required to notify or debrief unsuccessful offerors.

D. Two-Step Procurement Procedures

COAST may use two-step procurement procedures in both sealed bid and negotiated procurements, as long as the opportunity for full and open competition remains.

a) Review of Technical

The first step is a review of the proposing contractor's technical approach to the request and technical qualifications to carry out the approach. COAST may then narrow the competitive range to prospective contracts that demonstrate a technically satisfactory approach and have satisfactory qualifications.

b) Review of Bids and Proposals Submitted by Qualified Prospective Contractors

The second step consists of soliciting and reviewing complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified. Unless there are exceptional circumstances, COAST should attempt to solicit at least three bids or proposals for qualified prospective contractors.

E. Procurement of Architectural and Engineering Services (A&E)

When procuring architectural, engineering, or related services, COAST will use competitive proposals procedures based on the Brooks Act, as defined in 40 U.S.C. § 1101 through 1104. Other types of services considered A&E services include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer. The nature of the work to be performed and its relationship to construction, not the nature the prospective contractor, determine whether the Brooks Act may be used.

Provided a sufficient number of qualified firms are eligible to compete for the third party contract, the contractor's geographic location may be selection criterion.

The Brooks Act requires that:

1. An offeror's qualifications be evaluated;
2. Price be excluded as an evaluation factor;
3. Negotiations be conducted with only the most qualified offeror; and
4. Failing agreement on price, negotiations with the next most qualified offeror may be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to COAST.
5. Geographic location of the A&E firm may be considered as a selection criterion. This is prohibited in all other the types of procurement.

This "qualification based procurement method" can only be used for the procurement of A&E services. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

F. Procurement by Noncompetitive Proposals (Sole Source)

Sole source procurements are procurements accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order that is not within the scope of the original contract is also considered a sole source procurement and must comply with the guidelines below. Generally, sole source procurements may be negotiated by the Executive Director, Manager of Fleet Maintenance and Manager of Operations and Planning.

Property or services are available from one source if one of the following conditions exists:

- A new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the grantee only from one source and has not in the past been available from another source.

- Patent or data rights restrictions preclude competition.

- When it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition, in the case of the development or production of highly specialized equipment and major components.

- When it is likely that award to another contractor would result in unacceptable delays in fulfilling the grantee's needs in the case of the development or production of highly specialized equipment and major components.

a) General Guidelines for Sole Source Procurements

Procurement by noncompetitive proposals may be used when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

1. The item is available only from a single source (i.e., utility services, checking prior procurements for the same or similar items, no identical or compatible parts or equipment available from any other source);

2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (i.e., health and safety concerns); and

3. FTA authorizes noncompetitive negotiations.

If after solicitation of a number of sources, competition is determined inadequate, and after determining that the solicitation process was conducted appropriately, COAST may enter into negotiations with a single bidder.

b) Sole Source Procurements of Preventative Maintenance Items – (Bus Parts) Over $150,000

Preventive maintenance items such as bus parts may be procured under large purchases using:

1. A price or cost analysis of the item(s) with appropriate documentation.
2. COAST will certify in writing to the FTA regional office:
    a. that such manufacturer or supplier is the only source for such item(s); and
    b. that the prior of the item is no higher than the price paid for such item(s) by like customers.

c) Sole Source Justifications

All sole source procurements, except bus parts covered above and under small purchases must include a written cost or price analysis in accordance with FTA rules. In addition, the circumstances necessitating sole source procurement should be included in the written cost or price analysis.

G. Awards to other than the Lowest Bidder

COAST may award a third party contract to other than the lowest bidder, when an award is in the best interest of COAST.

H. Single Bids

In the event COAST advertises through Invitation for Bid, or Request for, and receives only one bid, before award of such bid, the Executive Director will re-evaluate the process to determine if the invitation or proposal inadvertently disqualifies some potential competitors. Other factors that will be taken into consideration include the market conditions during the period of procurement and comments from respective bidders regarding the requirements in the bid. If it is determined that the initial invitation or proposal inadvertently disqualified some potential competitors, the requirements will be revised, and re-advertised. If, after evaluation it is determined that the process and requirements set forth were not unnecessarily restrictive, COAST may make a decision to award the contract to the single bidder. In such a case, a cost or price analysis will be performed, and determination that the price is fair and reasonable will be established, using the guidelines in the section on cost and price analysis. Documentation as to the reason for the single bid will be maintained.

I. Acquisition of Real Property

COAST will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et. seq. and FTA Circular 5010.1D Chapter II-2; when purchasing real property. In addition, it will reference 49 C.F.R. 18.31 and 49 C.F.R. 24 Subpart B, and FTA Circular 4220.1F.

J. Leasing Project Property to Another Party

In the event COAST chooses to lease property purchased with federal funds to another party, COAST agrees to retain ownership of the property, and assure that the lessee will use the property appropriately, either through a "Lease and Supervisory Agreement," or another similar document. Upon request by FTA, COAST agrees to provide a copy of any relevant documents.

VI. PROTEST PROCEDURES

Protests concerning COAST's purchasing policies, the contract requirements, the specifications, the bidding procedures, or the contract award, or any other request for explanation or clarification must be submitted in writing and must include the following information:

- The name and address of the protester.
- The name and telephone number of the protestor's contact person having responsibility.
- A complete statement of the grounds of the protest with full documentation of the protestor's claim.

A. Pre-award Protests

Pre-award protests must be received by COAST no less than ten (10) working days before the scheduled bid opening. COAST will respond to the protest in writing and render its full decision at least five (5) working days prior to bid opening. COAST will report such protests to the FTA regional office.

B. Post-award Protests

Post-award protests will be received no later than five (5) working days after notification of the award bid. COAST will have ten (10) working days after receipt of the formal protest package to evaluate and issue a response. COAST will report such protests to the FTA regional office.

C. Appeals to FTA

It is the responsibility of COAST to settle contract issues and disputes. COAST is committed to using good sound administrative practices and business judgments, as well as professional ethics. Reviews of protests by FTA will be limited to alleged failure by COAST to have followed proper protests procedures, or its failure to review a complaint or protest. Protesters dissatisfied with COAST's final decision may appeal to FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation.

VII. CONTRACT ADMINISTRATION SYSTEM

The Executive Director's post-award contract administration responsibilities include the following responsibilities (these may be assigned to other staff by the Executive Director).

A. Monitoring for Contract Compliance

The Executive Director is responsible for monitoring contract compliance. If relying on other staff for contract compliance monitoring, the Executive Director must assure that staff gives timely notice of contract compliance problems.

B. Enforcing Contract Provisions

It is the Executive Director's responsibility to enforce the contract as written or amended. If not enforced, a loss of time or product quality may be incurred.

C. Issuing Timely Performance and Payment Approvals

The Executive Director is the person with authority to approve contract performance so that progress payments or other authorized expenditures of funds to the contractor are made. Timely approvals enable the work to proceed on a timely basis.

D. Modifying the Contract as Necessary

As the contract work proceeds, modifications or changes may become necessary. After technical considerations are resolved, if is the Executive Director who has the authority to initiate contract changes on behalf of COAST.

E. Closing Out the Contract

When the contract performance is completed, it is the Executive Director's responsibility to close-out the contract. Timely close-out enables comparison of performance to be checked against contract requirements while information is fresh and maximizes COAST's ability to correct any deficiencies of performance against contract requirements.

VIII. CONTRACT CLAUSES

A. Required Contract Clauses

COAST maintains a current list of required contract clauses applicable to contract as required by the FTA. When establishing contract agreements, all contracts will include provisions to define a sound and complete agreement. COAST will also refer to the FTA Master Agreement, FTA Third Party Procurement Manual, and the Best Practices Procurement Manual, Chapter 8 – Contract Clauses, when establishing required contract clauses.

B. General Contract Clauses

COAST maintains a boilerplate of general contract clauses that apply to many types of purchases. (See Appendix Q)

C. Other Contract Clauses

1. Insurance Provisions

The Executive Director, or his/her designee, should determine when insurance is required and include in any solicitation and contract documentation a clause informing contractors of the minimum coverage requirements required by federal or State statutes. When FTA grant funds are used the minimum requirements shall be as follows:

- Workers Compensation and Employers Liability - $100,000,
- General Liability - $500,000 per occurrence,
- Property Liability as required by COAST in special circumstances,
- Auto Liability for Personal Injury and Property Damage - $200,000 per person and $500,000 per occurrence for personal injury and $20,000 for property damage.

Insurance specifications shall provide that an insurance certificate be provided prior to contract work beginning and that, no less than 60 days prior to expiration of the insurance policy date, the contractor shall give notice to COAST of his/her intent to provide a new certificate. The Executive Director, or his/her designee, shall assure a current certificate is on file at all times during performance of the contract.

2. Contract Termination Provisions

As required by FTA Circular 4220.1F, all contracts of over $10,000 shall contain provisions for Audit/Inspection of Records, Remedies/Sanction for Breach of Contract, and Contract Termination Provisions.

The performance of work under a contract containing such provision may be terminated in part or in whole when the Executive Director, in consultation with counsel as necessary, determines that such termination is in the best interests of COAST. Contracts may be terminated for convenience (i.e., a reduced need or otherwise in the best interests of COAST) or for default (i.e., the contractor has failed to perform under the contract requirements). Contractors will not be granted the right of termination.

When the decision to terminate is made, a "Notice of Termination" shall be sent by the Executive Director to the contractor by Certified Mail, with a return receipt requested. The Notice of Termination shall specify the reason for termination, the extent to which the performance of work is terminated (i.e., in whole or in part), and the day upon which such termination becomes effective. Settlement of claims shall be made as soon as possible after the issuance of a Notice of Termination/Default to protect the interests of and minimize the liability of COAST. When settlement cannot be made, COAST shall reserve the right to issue a determination of the amount due consistent with the termination clause and applicable cost principles, subject to appeal under the disputes provisions of the contract.

3. Buy American Provisions

Section 165 of the Surface Transportation Assistance Act of 1982 (49 U.S.C., 1601), Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Parts 660 and 661 impose Buy American provisions on the procurement of foreign products and materials.

All COAST procurements are subject to the Buy America regulation, which requires that all steel and manufactured products (and cement in construction) have 100% U.S. content and be manufactured in the United States. There are special provisions relating to purchase of buses and communications equipment which require sixty percent (60%) U.S. content and final assembly in the United States. In purchasing buses, COAST is required (49 CFR Part 663) to conduct a pre-award and post-delivery audit of the manufacturer's Buy America certification.

All vendors are required to certify that they can or cannot comply with the Buy America requirements of Section 165(a). When a vendor cannot so certify, Part 661.7 of the regulation provides guidance under which COAST may submit a request for waiver of the Buy America requirements to the FTA Administrator.

Buy America Certification Forms will be included with each IFB or RFP solicitation and will be required to be executed and submitted with a bid or proposal. Purchases made using small purchase procedures are most often made under a purchase order, in order to set up the account payable. COAST's purchase order states conditions of purchase, include Buy America requirements. It is a condition of COAST's purchase order that, when accepting the order, the vendor certifies that Buy America requirements are met by signing and returning the certification printed on the purchase order. In those few instances where a purchase order is not used, a certification form will be furnished to the vendor for execution. Once a certification is received from a vendor for a particular item, it is not necessary to require receipt of a certification for each subsequent purchase provided there is a certification on file for that item.

4. Liquidated Damages Provisions

The Executive Director shall determine whether the use of a liquidated damages provision is appropriate for each specific procurement. The amount of liquidated damages set forth must be reasonable to compensate COAST for possible damages and not be so large as to be construed as a penalty. COAST will not include such provisions in contracts unless:

a) the time of delivery is of such importance that COAST can reasonable expect to suffer damages if the delivery is delinquent;
b) COAST determines the delivery schedule is reasonable at the time of contract award; and
c) damages would be difficult or impossible to establish.

If the Executive Director determines that a liquidated damages provision is necessary in a contract, he/she shall document the derivation of the rate of assessment and assure it is reasonable, proper, and not arbitrary.

D. Procuring Equipment or Materials Using Option Clauses

1. Definition of an Option Contract

An option is a unilateral right in a contract by which, for a specified time, COAST may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.

2. FTA Requirements for Option Contracts

If COAST elects to use option clauses in contracts, the FTA requires the following:

a. Evaluation of Options. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine the contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement and will be subject to a cost or price analysis before exercising.
b. Exercise of Options. COAST will ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract award. It will also be determined that the option price is fair and reasonable and better than prices available in the market, or that the option is the more advantageous offer at the time the option is exercised.

3. Piggybacking – Purchasing Options on Other Grantee's Bus Procurement

In the event COAST elects to purchase options on another grantee's bus procurement it will be established that the original Purchaser's options are reduced by the same number that has been assigned to COAST, otherwise COAST understands that this may constitute a sole source procurement. A price analysis must also be performed before COAST exercises an option.

IX. CONTRACT GUIDANCE

A. Maximum Length of Service and/or Supply Contracts

COAST will not enter into either rolling stock or replacement parts contracts with a period of performance exceeding five (5) years, inclusive of options. However, delivery of vehicles is allowed after this date, as long as the contract or options for these vehicles were executed within five years of the original agreement execution date.

Contracts for services and/or supplies may exceed five (5) years if there is written documentation of the term and a rationale for the time period of the contract.

B. Purchasing Extended Warranties with Capital Grant Funds

COAST will not purchase any extended warranties with capital grant funds, unless it can be determined that such warranties do not exceed industry accepted standards, and service agreements will extend the life of equipment or increase its value. For the most part, warranties and service agreements will be treated as a normal expense of.

In the case of warranty provisions for bus procurements, COAST will adopt the American Public Transit Association's (APTA) Standard Bus Procurement Guidelines, which have been accepted as industry standard by FTA, and are summarized as follows:

- Complete Bus – 1 year or 50,000 miles
- Body and Chassis (structural integrity) – 3 years or 150,000 miles
- Body and Chassis (corrosion/fatigue) – 12 years or 500,000 miles
- Propulsion System (i.e., engine, transmission, axels) – 5 years of 300,000 miles
- Major Subsystems (i.e., brakes, signs, heat, A/C, doors, air compressor/dryer, W/C lifts, ramps, starter, alternator) – 3 years of 150,000 miles

All RFPs, IFBs, and other solicitation documents and contracts will be maintained in the procurement files for purchase of such warranties or extended services.

C. Payment Provisions in Contracts

1. Using Advance Payments

COAST will not enter into any contractual agreement to pay any or part of the payments prior to costs incurred by the contractor, unless prior written concurrence is obtained from the FTA Administrator.

2. Using Progress Payments

The two major types of progress payments are payments based on costs, and payments based on completion of work. FTA considers both types as contract financing methods. Instances COAST may use progress payments in accordance with FTA guidelines are:

a) When payments are only made to the contractor for costs incurred in the performance of the contract, and
b) When COAST is allowed to obtain title to property (materials, work in progress and finished goods) for which progress payments are made. In lieu of obtaining a title, COAST may require an irrevocable letter of credit or equivalent means to protect its interest.

Additional guidelines may be adopted on a case-by-case basis from FTA Best Practices Procurement Manual, section 2.4.4, which asserts that progress payments may be appropriate if:

a) The contractor will not be able to bill for the first-delivery of products, or other performance milestones, for a substantial time after work begins. The usual time period for using progress payments is four months or more for small businesses, and six months or more for others, and;
b) The contractor's expenditures prior to delivery of the first items will have a significant impact on his/her working capital.

(1) Progress Payments Based on Costs

The Federal Government's customary progress payment rate is 80% of contract costs for large businesses and 85% of contract costs for small businesses. The total amount of progress payments may not exceed 80% of the total contract price.

(2) Progress Payments Based on Percentage of Completion

The Federal government authorizes progress payments on its contracts based on a percentage stage of completion of the work. This type of progress payment is standard for construction contracts for all Federal agencies. 49 C.F.R. Part 18.21(d) allows the use of percentage of completion method to pay construction contractors.

3. Withholding and Final Payment

COAST will refer to specific contract provisions that expressly authorize the withholding of payments, such as the Davis Bacon Act Clause, or the Contract Work Hours and Safety Standards Act Clause. COAST may also establish payment withholding based on the standard Federal government clause for the payment of fixed fee on Cost Plus Fixed Fee contracts, which call for a 15% withholding of the fixed fee until the contractor submits a certified final indirect cost rate proposal and otherwise complies with the final deliverable documentation requirements of the contract.

In the event COAST decides to withhold payments on a contract, it will ensure that the amount of money withheld bears a reasonable relationship to the unsatisfactory work (e.g., the amount withheld will represent a reasonable estimate of the contractor's potential liability). The amount withheld will not be so great however, such that it impairs the contractor's ability to perform.

Final payment will be made to the contractor when it has satisfied all of the requirements called for by all provisions of the contract, including all required documentation. Before making final payment, COAST may obtain a signed release from the contractor releasing it from further claims by the contractor.

X. SPECIFIC CONTRACT TYPES

A. Revenue Contracts

A revenue contract is any contract whose primary purpose is to either generate revenues in connection with a transit-related activity or to create business opportunities using an FTA-funded

asset. Examples may include advertising, concessions (food and newsstands), use of right-of-ways, licenses, and land and property leasing. COAST will adhere to the following conditions regarding such contracts:

1. No contract award will be entered into for any period beyond five (5) years, without written documentation as to the benefit to COAST for the amount of time the contract is to be entered for;
2. COAST will use competitive selection procedures for award of such contracts; and
3. COAST will not exclude Disadvantaged Business Enterprises (DBEs) from participating in business opportunities by entering into long-term, exclusive agreements with non-DBEs for the operation of major transportation-related activities or major activities for the provision of goods and services.

B. Use of Time and Materials Type Contracts

COAST will use time and materials type contracts only:

1. After a determination that no other type contract is suitable; and
2. If the contract specifies a ceiling price that the contractor will not exceed except at its own risk.

XI. METHODS FOR PERFORMING COST AND PRICE ANALYSIS

FTA requires that a cost or price analysis be made in connection with every procurement, including contract modifications/change orders at or above the simplified acquisition threshold ($250,000). Non-competitive actions such as change orders, modifications, and other sole source awards will require a cost analysis of the contractor's cost estimates for labor, overhead, profit, etc. For sealed bids, an analysis of variances in the bids and a comparison with the independent cost estimate (ICE) is important. When the low bid differs significantly from the ICE, an analysis must be done to find the reason for the disparity. For example, if the specifications were ambiguous it may be necessary to amend the specifications and resolicit bids.

A. Cost Analysis

A cost analysis entails the review and evaluation of the separate cost elements and is generally conducted to form an opinion on the degree to which the proposed cost, including profit, represents what the performance of the contract *should cost*, assuming reasonable economy and efficiency.

1. When to Perform a Cost Analysis

A cost analysis will be performed when:

1. The offeror is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost, for example under architectural and engineering services contracts; or
2. Adequate price competition (2 or more bids or proposals) is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public, or on the basis of prices set by law or regulation.

A price analysis may be used in all other instances to determine the reasonableness of the proposed contract.

2. Cost Analysis Process

Some common elements in performing cost analysis may include the following:

a) Making an estimate based on inspection of the product itself (with technical guidance), review of drawings, specifications, and prior data (such as cost data prior procurements);

b) Review of each element of cost to determine whether the offeror's estimate contains an accurate and reasonable prediction of the cost incurred during performance; and/or
c) Adding a rate of profit to the cost that has been determined to be fair.

All reasonable costs of performance can be considered, however, the cost will be consistent with Federal cost principles found in Federal Acquisition Regulation Part 31.

B. Price Analysis

A price analysis involves examining and evaluating a proposed price without evaluating its separate cost and profit elements. Price analysis is based essentially on data that is verifiable independently from the offeror's data. Use Appendix H as a starting framework for price analysis.

Some additional common price analysis techniques that may be considered may include:

1. Comparison of proposed prices received in response to the solicitation;
2. Comparison with competitive, published price lists, published market price of commodities, similar indexes, and discount or rebate arrangements;
3. Comparison of proposed prices with the cost estimate performed prior to solicitation, if it can be performed such that it can render a reasonable determination that the price is reasonable; and
4. Comparison of proposed prices received with prior procurement actions for the same or similar end items, with consideration given to:
    a. Changes in economic conditions between the times of the two procurements;
    b. Differences in quantities; and
    c. Inclusion of nonrecurring cost in the prices, such as design, capital equipment, production facilities, etc. To make a fair comparison, nonrecurring costs may be removed from both prices.

C. Profit

COAST will negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

D. Federal Cost Principles

COAST will make every effort to ensure that all cost estimates included in negotiated prices are consistent with Federal cost principles. In doing so, COAST will reference past and current cost principles that comply with applicable Federal cost principles.

The cost plus a percentage of cost, and percentage of construction cost methods of contracting will not be used.

XII. RENTAL/LEASING IN LIEU OF PURCHASE

In certain situations, COAST's equipment requirements may be more economically filled by rental/lease than by purchase. The decision to rent rather than purchase must be made on a case-by-case basis, and should only be used when it is in COAST's best interest. The Executive Director, or his/her designee, should perform a lease versus purchase analysis to support the decision to rent or lease for amounts over $50,000.

Decisions to rent/lease may be made for short-term leases of equipment which is required for a short time or for a unique task, or when it can be determined that it is easier to have equipment maintained if it is leased. Conversely, long term leases and leases for items that should be purchased and capitalized but cannot be because of budget constraints are not considered economically prudent.

A lease versus purchase analysis should be appropriate to the size and complexity of the procurement. In determining whether the lease of equipment is feasible, the following factors must be considered:

- Estimated length of the period the equipment is required and the amount of time of actual equipment usage;
- Financial and operating advantages of alternative types and makes of equipment;
- Total rental/lease cost for the estimated period of use;
- Net purchase price, if acquired by purchase;
- Transportation and installation costs;
- Maintenance and other service costs;
- Trade-in or salvage value;
- Imputed interest costs; and
- Availability of a servicing facility especially for highly complex equipment.

For description of other leases and requirements such as Capital leases, leases involving Certificates of Participation, and Cross-Border leases, refer to FTA Master Agreement, section 16.

XIII. PURCHASING/LEASING BUSES WITH FTA FUNDS (BUS TESTING)

To the extent applicable, COAST agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any revision thereto, for buses purchased or leased with FTA funds. COAST will certify to FTA that any new bus model required to be tested has been tested at the FTA-sponsored test facility in Altoona, Pennsylvania.

A new bus model is a bus design variation of a bus design (usually designated by the manufacturer by a specific name and/or model number) that has not been in use in the U.S. mass transit service prior to October 1, 1988, or that has been in service prior to that date, but is being procured with a major change in configuration or components. A new bus model must be tested.

Bus testing requirements apply to different mass transit vehicles including vans, other small vehicles, medium-light-duty mid-size buses, and heavy-duty small and large buses. Bus testing does not apply to unmodified mass-produced vans, bus prototypes, some electric buses, or trolley buses (meaning genuine trolleys, not the replica trolleys popular today).

COAST will maintain documentation in the procurement files to demonstrate how this requirement has been implemented. This documentation will indicate whether a bus model has been tested and whether testing is required. For buses that require testing, a copy of the test report must be obtained prior to acceptance of the buses and expenditure of Federal funds.

XIV. DISPOSITION OF SURPLUS AND SCRAP

A. Premature Withdrawal of Property from Use

COAST will notify FTA immediately when any Project real property, equipment, or supplies are prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

Unless otherwise approved by the FTA, COAST will remit to FTA its share of the fair market value of real property, equipment, or supplies prematurely withdrawn from appropriate use. The amount of Federal share in the property will be determined on the basis of the ratio of the federal assistance awarded by the Federal government for the property to the actual cost of the property.

COAST agrees that the fair market value of the property prematurely withdrawn from use will be calculated as outlined in the FTA Master Agreement.

B. Capital Inventory

COAST will conduct a physical inventory of equipment and reconcile the results with the equipment records every two years. Documentation of the inventory and any reconciliation with equipment records will be kept until a triennial review of that inventory.

C. Identification of Surplus and Scrap

The identification of surplus and scrap will be the responsibility of the Executive Director. The following justifications may apply:

- Equipment will be surplus when it becomes obsolete to COAST either because it has been replaced by more cost-efficient equipment, or because it services equipment no longer in the COAST fleet.
- Parts are surplus when stock on hand exceeds a maximum, as established or revised due to use history, and are not expected to be used. This includes useful parts for vehicles no longer in the COAST fleet.
- Parts will be scrapped when they are not useful to COAST and other operators contracted, and they cannot be returned to the supplier.
- Equipment will be scrapped when it is non-functional and non-repairable, or when it is obsolete to COAST and all other operators COAST has contracted.

D. Disposition of Surplus Stock

Surplus stock uses both inventory space and working capital. It is the policy of COAST to dispose of surplus and scrap in the most effective manner available. Steps to be followed include, but are not necessarily limited to:

- Returning to vendor for credit
- Sale to other operators

Surplus stock which cannot be returned or sold to another operator will not be sold as scrap while it is still applicable to vehicles in the COAST fleet. All sales over $5,000 will be by cashier's check or electronic transfer of funds (ETF).

E. Disposition of Scrap

Parts or equipment identified as scrap will be sold to the highest bidder of at least two (2) scrap dealers willing to make bids, or to the highest bidder in a publicly advertised sale. Disposition of equipment identified as scrap will be coordinated with the Executive Director, since its disposition may have grant or property record implications. All sales over $5,000 will be by cashier's check or electronic transfer of funds (ETF).

F. Specific Procedures for Disposition of Surplus and Scrap

Specific procedures may include:

- Competitive bidding procedures for all material offered for sale.
- Development of specifications for the surplus items to be offered for sale and review by the Executive Director.
- Preparation of a solicitation and advertising of the items being offered for sale.
- Analysis of bids by the Executive Director, with a written recommendation for award.

APPENDACIES

A - GLOSSARY

Abstract of Bids: a document used to record the results of sealed bids for each bidder, which is subsequently made available for public inspection, after completion of the bid process.

Best-Value: a selection process in which proposals contain both price and qualitative components, and award is based on a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer most advantageous and of the greatest value to COAST.

Board: will mean the Board of Directors of COAST.

Cardinal Change: is a major deviation from the original purposes of the work or the intended method of achievement, or a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.

Change Order: is an order authorized by COAST directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor.

Chairperson: will mean the Chair of the Board of Directors of COAST and will include the Vice-Chair when the Chair is unavailable.

Contract Administration: is the post award administration of the contract to ensure compliance with the terms of the contract by both the contractor and COAST.

Contract Administration File Documentation: is the documentation contained in the contract file maintained by, or on behalf of, the contract administrator. It reflects the actions taken by the contracting parties in accordance with the requirements of the contract and documents the decisions made, and the rationale therefore, of matters which may result (or have resulted) in controversy or dispute.

Design-Bid-Build Project: is a construction project under which a recipient commissions an architect or engineer to prepare drawings and specifications under a design services contact, and separately contracts for construction, by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project.

Design-Build Project: is a construction project under which a recipient enters into a contract with a seller, firm, or consortium of firms both for design and construction of a public transportation facility.

Electronic Commerce (E-Commerce): consists of electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web internet technology, electronic bulletin boards, purchase cards, electronic funds transfer, electronic signatures, and electronic data exchange.

FTA: is the Federal Transit Administration – an operating administration of the U.S. Department of Transportation.

Joint Procurement: is a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum or maximum.

Large Purchase: is a purchase over $150,000 and may include: Invitation for Bids (IFB), Request for Proposals (RFP), Two-Step Procurement Procedures, Design-Bid-Build, Design-Build, and Architectural and Engineering Services (A&E).

Local Government: includes county, municipality, city, town, state, regional or interstate government entity, or any agency or instrumentality thereof.

Micro-Purchase: is a purchase/contract that does not exceed $3,000. These may be made with Telephone Quotes.

Noncompetitive Proposals (sole source): is procurement only if you can justify not soliciting additional competition in the manner explicitly defined in FTA Circular 4220.1F Chapter VI, § 3i.

Piggybacking: is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process. ("FTA Dear Colleague" letter, October 1, 1998).

Purchase: will mean the procurement by purchase, lease, or otherwise of real or personal property by COAST, and awarding of contracts for construction, alterations, supplies, equipment, repairs or maintenance, or for rendering any services to COAST.

Recipient: means COAST or any organization receiving funds directly from FTA.

Sale: will mean the sale, lease, or other disposition of any real or personal property by COAST.

Small Purchase: is a purchase/contract between $3,500 and $149,999. Fuel purchases between $3,500 and $50,000 may be made with telephone quotes. All purchases between $50,001 and $149,999 must include written quotes.

Statute of Frauds: generally dictates whether contracts should be oral or written. In order to be enforceable, the Statute of Frauds requires certain contracts to be written and signed by the party charged with performing the contract. For example, contracts for the sale of goods in excess of $500 must be in writing in order to be enforceable. (See Best Practices Procurement Manual, Section 1.2.2 for a list of other instances where Statute of Frauds applies).

Subrecipient: is any organization receiving FTA funds from COAST, but does not include contractors or subcontactors. Subagreement is the actual agreement between COAST and the subrecipient.

Telephone Quote: is a quote for Micro-purchases or Small purchases obtained by calling a vendor and verbally stating specifications for goods or services in order to solicit a quote. Documentation for telephone quotes must be recorded on a "Telephone Quote" form. Telephone quotes are only acceptable for micro-purchases and for small purchases for fuel less than $50,000.

Third Party Contract: is any purchase order or contract awarded by COAST to a vendor or contractor using Federal financial assistance awarded by FTA.

U.S. DOT: United States Department of Transportation.

Written Quote: is a document submitted by a vendor to COAST in writing via fax, mail, printed catalog price, advertisement, or electronic means. Written quotes may be used for Micro or Small purchases.

B – WRITTEN HISTORY OF PROCUREMENT

Instructions for Use

1) **Reason for the Procurement:** Please document why the purchase is being made.

2) **Method of Procurement:** Select the appropriate method.
   a. Micro – for purchases $9,999 or less
   b. Small – $10,000 - $249,999
   c. RFP – Over $250,000 and meets *all* the following criteria
      - ☐ Complete specifications not feasible
      - ☐ Bidder input needed for specification
      - ☐ Two or more responsible bidders willing to compete
      - ☐ Discussion needed with bidders after of proposals, prior to award
      - ☐ Fixed price can be set after discussions
   d. Bid – Over $250,000 and meets *all* the following criteria
      - ☐ Competition is inadequate
      - ☐ Two or more responsible bidders willing to compete
      - ☐ Procurement suitable for firm, fixed price
      - ☐ No discussion with bidder needed after receipt of offers
   e. A&E – For engineering services
   f. Sole Source – Must meet at least one of the following criteria
      - ☐ Only one known supplier (be sure to check if there are multiple distributors as there may be competition between them)
      - ☐ Public exigency issue/emergency
      - ☐ FTA has authorized noncompetitive negotiations

3) **Justification if Non-Competitive:** If sole source, a justification must be documented as to why a procurement without competition must be conducted. Complete Appendix D and note a summary here.

4) **Contract Type:** This will usually be Fixed Price, but there are other options, including:
   a. Firm Fixed Unit Prices
   b. Cost Plus Fixed Fee
   c. Time and Material (T&M) (be sure to include a justification if this type of contract is chosen)
      - ☐ Fixed price cannot be set for work
      - ☐ Complete extent of work unknown
   d. Blanket Purchase Order
   e. Indefinite Deliver Indefinite Quantity (IDIQ)
   f. Cost Reimbursement

5) **Rationale for Contract Type:** Choose method used. If “evaluation results” or “other” is chosen, please add documentation for decision.

6) **Reason for Selection/Rejection:** Please explain why you decided to choose the vendor or why you decided to reject them all?

7) **Basis for Contract Price:** Circle how the contract price was determined, or describe if other. If you negotiated a price, be sure to include the memorandum documenting that process.

8) **Cost/Price Analysis:** Please fill in the blank sections describing your cost/price analysis. Reference the completed Appendix H in the procurement file.

9) **Summary of Responsibility and Responsiveness:** Please provide a summary statement that indicates contractor responsibility and responsiveness to solicitation. Reference the completed Appendix I in the procurement file.

10) **Award:** Identify who the contract was awarded to, the date of the contract award, and provide a copy of meeting minutes documenting board approval (if necessary).

11) **Change Orders:** Identify and summarize the reason for change, dates, cost analysis, time impact and the modification of numbers.

WRITTEN HISTORY OF PROCUREMENT

Date: _____ **Completed by:** _____

PO / Procurement No.

1) Reason for the Procurement:

2) Method of Procurement:

Micro:	☐	Competitive RFP:	☐	Competitive Bid:	☐
Small :	☐	A & E Services:	☐	Sole Source:	☐

3) Justification if Non-Competitive:

4) Contract Type:

☐Fixed Price ☐Firm Fixed Unit Prices ☐Cost Plus Fixed Fee ☐Time and Material (T&M) ☐Blanket Purchase Order

☐Indefinite Deliver Indefinite Quantity (IDIQ) ☐ Cost Reimbursement

5) Rationale for Contract Type:

- ☐ Lowest responsive, responsible bidder (Micro, Small, IFBs)
- ☐ Evaluation results (RFPs) were:
- ☐ Other:

6) Reason for Selection/Rejection:

7) Basis for Contract Price:

☐Accepted Contractor's Proposed Pricing ☐Negotiated Price (must include memorandum)

☐Other:

8) Cost/Price Analysis:

The price offered by the supplier was within _____% of the independent estimate, and variance between the offerors constituted a range of _____. The competitive range was determined to be from $_____

Pricing discrepancies between the offers was attributed to _____

Other sources/data used to affirm price reasonableness were _____

9) Summary of Responsibility and Responsiveness (must address both responsibility and responsiveness, vendor is responsible because…, vendor is responsive because…):

10) Award:

Contract Awarded to: _____

Date of Contract Award: ☐Board Approval (Meeting Minutes Attached)

11) Change Orders: Identify and summarize the reason for change of dates, cost analysis, time impact and the modification of numbers.

C – PROCUREMENT CHECKLIST

Instructions for Use

Use this sample template for ensuring that individual procurement files comply with appropriate Federal and local record-keeping requirements. The Step/Item Numbers identified are not intended to be all inclusive and are not required for all Procurements. The recipient must determine which Tabs are appropriate for the procurement at hand and may add Items which are otherwise necessitated by local procedures. The template must be signed and dated by the individual compiling the procurement file.

- Insert the appropriate Procurement/PO number
- Record the date the procurement process started
- Record the Selected Vendor (Only to be filled out after Step 19)
- Record the total Procurement cost (Only to be filled out after step 19)
- Record a brief description of the item/services to be procured
- Record the delivery date of Items and/or services

Applicability: Capital letters indicate the Item is required for a given procurement type; M: Micro, S: Small, and L: Large. Lower-case italicized letters indicate an item that is optional or to be included if applicable for a given procurement type; *m*: Micro, *s*: Small, and *l*: Large.

1. Insert the Written History of Procurement (Appendix B)
2. Insert the Sole Source justification if applicable (Appendix D).
3. Insert the Independent Cost Estimate (Appendix E)
4. Insert any Scope of Work, Technical Specifications etc.
5. Insert the Micro/Small Purchase Abstract (Appendix F)
6. Insert a copy of the final published IFB/RFB/Solicitation and any relevant notices
7. Insert the Abstract of Bids Form, recording and describing all submitted bids (Appendix G)
    a. Micro and Small Purchases: If Appendix F is used, Appendix G is not required.
8. Insert documentation of any Late Bids received
9. Insert Cost/Price Analysis Form (Appendix H)
10. Insert signed copies of all Bid Evaluations completed by staff
11. Insert Bidder Responsiveness Evaluation Form (Appendix I)
12. Insert a dated copy (pdf or printed) of a disbarment check from SAM.gov
13. Insert Board Approval (Copy of minutes if applicable)
14. Insert any Bond Documentation
15. Insert any Insurance Documentation
16. Insert a copy of the final signed contract with all attached federal clauses
17. Record item in Micro/Small Purchase log
18. Insert a copy of the posted Notice of Award
19. Insert a copy of the Notice to Proceed (only for Construction contracts)
20. Insert copies of the notice sent to unsuccessful bidders and record of debriefing
21. Insert all correspondence and documentation produced from VI. PROTEST PROCEDURES
22. Insert all Change Orders, Amendments, Supplements, etc. to the contract.
23. Insert any relevant General Correspondence regarding the contract
24. Rolling Stock: Attach the Pre-Award Audit Report
25. Rolling Stock: Attach the TVM Award Report (Appendix T)
26. Rolling Stock: Attach Post-Delivery Audit Report

PROCUREMENT HISTORY FILE CHECKLIST
FOLLOW IN CHRONOLOGICAL ORDER

Procurement/PO #:					Vendor:	Start Date:	
Procurement Amount: $					Description:	Delivery Date:	
No.	Applicability			Apdx.	Item	In File	N/A
1.	M	S	L	B	Written History of Procurement		
2.	*m*	*s*	*l*	D	Sole Source Justification		
3.			L	E	Independent Cost Estimate		
4.	*m*	*s*	*l*		Scope of Work, Technical Specifications etc.		
5.	M	S		F	Micro/Small Purchase Abstract		
6.			L		Copy of IFB/RFB/Solicitation and notices		
8.	*m*	*s*	L	G	Abstract of Bids		
10.			*l*		Documentation of any Late Bids		
11.			L	H	Cost/Price Analysis		
12.			L		Bid Evaluations		
13.			L	I	Bidder Responsiveness Evaluation		
14.	M	S	L		Disbarment check from SAM.gov		
15.			*l*		Board Approval (Copy of minutes if applicable)		
16.			*l*		Bond Documentation		
17.	*m*	*s*	*l*		Insurance Documentation		
18.	*m*	S	L		Copy of Signed Contract		
19.	M	S		E	Record item in Micro/Small Purchase log		
20.			L		Notice of Award		
21.	*m*	*s*	*l*		Notice to Proceed *(Construction)*		
22.			L		Notice to unsuccessful bidders and record of debriefing		
23.			L		Records of any Protests		
24.	*m*	*s*	*l*		Change Orders, Amendments, Supplements, etc.		
25.	*m*	*s*	*l*		General Correspondence		
26.	*m*	*s*	*l*		Rolling Stock: Pre-Award Audit		
27.	*m*	*s*	*l*	T	Rolling Stock: TVM Award Report		
28.	*m*	*s*	*l*		Rolling Stock: Post-Delivery Audit		
Remarks:							
File Date:					Signature:		

D – SOLE SOURCE JUSTIFICATION

Instructions for Use

This sample template is used for micro purchase transactions when competition is not anticipated. Attach any supporting documents and file this template in its appropriate place in the Procurement History File.

1. Provide a brief description of item.

2. Check one of the four listed sole source circumstances.

3. Identify the recommended source and address.

4. Attach a copy of the Independent Cost Estimate.

5. In the "Comments" section, briefly describe the procurement circumstances and history, including identifying and describing any former purchase for this item or service. If more space is required in order to provide an adequately detailed history or description of the circumstances, document the justification on a separate sheet and attach to this template.

6. The requesting individual (typically, the "customer") must print his/her name and title and sign and date the document.

7. The individual making the actual purchase signs and dates the document.

8. The individual who approves the sole source purchase must sign and date the document.

SOLE SOURCE JUSTIFICATION

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

Item Description:	

Check One:

- ☐ The item is available only from a single source (sole source justification is attached or described below in the "Comments" section).
- ☐ The public urgent need or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).
- ☐ FTA authorizes noncompetitive negotiations (letter of authorization is attached).
- ☐ After soliciting a number of sources, competition is determined inadequate (record of the sources solicited is attached).

Recommend Source:	
Independent Cost Estimate (ICE) is attached?	☐ Yes ☐ No
Comments:	

Approvals/Signatures:

Requester *(Name, Title)*	Signature	Date
Purchasing Agent *(Name, Title)*	Signature	Date
Approval Authority *(Name, Title)*	Signature	Date

E – ICE: INDEPENDENT COST ESTIMATE

INDEPENDENT COST ESTIMATE OVERVIEW

Procedures

1. Supporting Documentation:

To determine the level of documentation COAST needs to support a procurement, first determine the purchase threshold. Micro-purchases are up to $9,999, Small purchases are between $10,000 and $249,999. Independent cost estimates must be made before receiving bids or proposals for all projects at or above the simplified acquisition threshold ($250,000), which may include bidders' estimates of the cost of the service or project..

2. Methods of ICE:

Determine the method of ICE that best fits your procurement requirements. An ICE must be completed before receiving bids or proposals for all purchases over the simplified acquisition threshold.

The most common methods to complete an ICE are:

A. Publicly published price lists
B. Recently invoiced price
C. Outreach/Market Survey

A. Publicly published price lists:

Typically used for goods and equipment. Price lists or catalogues are great sources for determining a fair and reasonable price for off-the-shelf procurements such as technology, office supplies, and training. Price lists are often available online as well as printed advertisements. Prices published on a store shelf are also acceptable.

B. Recently invoiced price:

Typically used for goods and equipment, or services. If COAST made a recent procurement for similar goods or services, this recent invoice may be used to determine fair and reasonable price as part of the ICE. "Recent" is a relative term and can vary based on project circumstances.

C. Outreach/Market Survey:

Typically used for goods and equipment, or services. COAST may use contacts at other agencies to determine a fair and reasonable price so long as the agency is of similar size and the purchase or project is of similar scope.

INDEPENDENT COST ESTIMATE

Purchase Request Number	Item Description/Project Name	Delivery/Completion Date
Name/Signature of Preparer	Total Estimated Price/Cost	Date of Estimate

Method: The above estimate has been developed as follows (check all that apply):

☐ Published catalog or price list (attach pertinent catalog or price list pages).

☐ Recent prices for the same or similar item/service (identify contracts, purchase orders, sources, and additional helpful information (e.g., dates of award), and attach any pertinent documents).

☐ Independent Third Party estimate developed by _____ (attach estimate).

☐ Other (specify) _____ _____.

Cost Estimate Details. Details for the estimated price/cost identified are shown below.

Cost of Standard Items

Product	Unit Cost DELIVERED	Unit Cost NO FREIGHT	Notes/Data Source

Cost of Services, Repairs, or Non-Standard Items

Item/Task:							
Materials	Other Direct Costs	Labor (rate, hours)	Labor Class	Allocated Overhead	SG&A*	Profit	Total

* Selling, General & Administrative Expenses

F – MICRO/SMALL PURCHASE SOURCE LIST AND ABSTRACT

Instructions for Use

1. This multi-use sample abstract can be used in many instances to simplify documentation requirements for both Micro- and Small Purchases. It is used when soliciting oral or written quotes to document sources sought, item descriptions, delivery requirements, procurement history, apparent awardee past performance and responsibility, and price reasonableness. (Refer WisDOT Small Purchase Toolkit, Sections 6.0; 8.1; 9.4.b.; 9.6.b.; and 9.7.a.)

2. The abstract is self-explanatory in terms of the information required for each section. The phrase "if used" or "if required" refers to any local (subrecipient-level) governing requirements which may address those particular information blocks. They are not required for federal purposes and should be left blank (unfilled) if there are no local governing requirements (i.e.., to assign a Purchase Request number, advertise the procurement, identify business size, identify a funding or accounting code for the procurement, or obtain "approval" signatures).

3. Attach any pertinent supporting documents such as written quotes received, hard-copy catalog or Internet-based price lists, etc., which would support the subrecipient's determination that the winning supplier's quoted price or prices are "fair and reasonable," sole source justification, etc. Also, attach the written Purchase Order.

4. The Abstract must be signed and dated. The abstract and supporting documents must be filed in the appropriate place within the Procurement History File. When properly filled out and complete with appropriate supporting documentation, this abstract is sufficient to satisfy Federal requirements for documenting Micro- and Small Purchases "responsibility" and "price reasonableness" determinations.

MICRO/SMALL PURCHASE SOURCE LIST AND ABSTRACT

CONTRACT/PURCHASE ORDER NUMBER	PURCHASE REQUEST NUMBER (*If used*)	DATE QUOTES SOLICITED AND RECORDED	BUYER'S NAME

PROCUREMENT ADVERTISED (*If required*)	BUSINESS SIZE (*If required*)	QUOTATION	CLOSING DATE
☐ YES ☐ NO ☐ N/A	☐ SMALL ☐ OTHER	☐ WRITTEN ☐ ORAL	

LIST OF SUPPLIERS DECLINING TO QUOTE PRICE

SUPPLIERS RESPONDING AND QUOTATIONS RECEIVED

Name/Address/Phone No.	Name/Address/Phone No.	Name/Address/Phone No.	Name/Address/Phone No.	Name/Address/Phone No.

COMMODITY CODE AND ITEM DESCRIPTION	QTY.	UNIT OF ISSUE	UNIT	**TOTAL**	UNIT	**TOTAL**	UNIT	**TOTAL**	UNIT	**TOTAL**	UNIT	**TOTAL**
TOTAL DOLLAR VALUE												
SUPPLIER'S DISCOUNT TERMS												
SUPPLIER'S F.O.B. POINT/ INSPECTION POINT												

IF ONLY ONE SOURCE IS SOLICITED OR ONLY ONE RESPONDS, ATTACH THE SOLE SOURCE JUSTIFICATION OR EXPLAIN THE SINGLE OFFER ON THE REVERSE OF THIS ABSTRACT

WAS PREVIOUS SUPPLIER SOLICITED? ☐ YES ☐ NO

DELIVERY REQUIRED WITHIN *(Specify days)*

LAST AWARD

VENDOR	DATE	PRICE	QUANTITY

DOES THE LOW OFFEROR HAVE A SATISFACTORY PAST PERFORMANCE RECORD? (*Describe or list sources checked on the reverse*)

☐ YES ☐ NO

IS THE LOW OFFEROR FOR THIS PROCUREMENT ON THE DEBARRED/SUSPENDED LIST?
Attach copy of sam.gov results

☐ YES ☐ NO

ARE ITEMS COVERED BY STANDING PRICE QUOTATION ON FILE WHICH EXPIRES ON

☐ YES ☐ NO DATE

THE AWARD PRICE IS DETERMINED FAIR AND REASONABLE BASED ON: Recent purchases ___ Current price list ___ Current catalog price ___ Advertised sales/market price ___ Regulated rate (utility) ___ Quotes Received ____

Other _____ **(*Check all that apply*)**

ACCOUNTING OR FUNDING CODE (*If required*)	SUPPLIER SELECTED (*Attach the Purchase Order to this Abstract as well as all quotes received, catalog or price lists, etc.*)	DATE ORDERED

BUYER'S SIGNATURE AND DATE	APPROVAL SIGNATURE *(If required)*	DATE APPROVED

G – ABSTRACT OF BIDS

Solicitation Number:	Opening Time: Date:	Page of Pages

Description of Supplies or Services:

Name of Bidder/Proposer:	Amount of Bid:	Comments:

I certify that I have opened, read, and recorded on this bid abstract, all offers received in response to the above solicitation.

Print Name: _____

Title:

Date:

Signature: _____

H – PRICE ANALYSIS AND PRICE REASONABLENESS

Instructions for Use

1. Use this template to document price analysis and price reasonableness for small purchases.

2. Refer to the Section V.A or V.B, for guidance relevant to conducting price analysis and documenting price reasonableness. Price analysis must be conducted and price reasonableness determined prior to any Purchase Order award.

3. For a sole source procurement, prepare a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits.

4. The analysis must be signed and dated by the individual conducting the analysis and determining the prospective awardee's price to be "fair and reasonable."

5. The Price Analysis and Price Reasonableness template and any supporting documentation must be filed in its appropriate place in the Procurement History File.

COST/PRICE ANALYSIS AND PRICE REASONABLENESS DETERMINATION

Purchase Order: _____ Item Description _____

I hereby determine the price quoted by (supplier) _____ or the purchase of this item to be fair and reasonable based on the following analysis:

Check one or more which apply:

_____ Comparison of and based on current quotes received for the same or similar item (complete the matrix below).

_____ Comparison of proposed pricing with pricing from recent purchases of the same or similar item, adjusted by the pertinent Consumer or Producer Price Index or Inflation Rate over the corresponding time period, if appropriate. This includes the same or similar items found on existing State or municipal contracts (identify contract pricing sources and attach supporting documentation).

_____ Comparison of price components against current industry standards, such as labor rates, dollars per pound, dollars per square foot, etc., to justify the price reasonableness of the whole (attach the analysis which supports the conclusions drawn).

_____ Comparison with published catalog prices or price lists, commercially advertised sales prices, or prices obtained through other market research (e.g., Internet-based, trade journals, etc.) for the same or similar item commercially available from competing suppliers (complete the matrix below and attach supporting quotes, catalog pages, price lists, advertisements, etc.).

_____ Comparison of proposed pricing with an in-house independent cost estimate for the same or similar item (complete the matrix below, attach the signed in-house estimate, and explain factors influencing any differences found).

_____ The quoted price is from a regulated utility (identify the utility in the "Comments" section below).

_____ Other (e.g., verifiable sales information for the same or similar items sold to the supplier's other customers (discuss in the "Comments" section below and attach supplier's sales information).

SUMMARY MATRIX

Item	**Proposed Pricing**	**Average Market Price**	**Competitor A**	**Competitor B**	**In-House Estimate**	**Other**

Reason for the Selection:

The price is fair and reasonable because:

_____

_____

_____

Supporting documents are attached. This analysis and determination will be filed in the Procurement History File.

_____ _____ _____

Purchasing Agent Signature Print Name Date

I – RESPONSIVENESS AND RESPONSIBILITY FORM

Contractor Responsiveness and Responsibility Form

Bid/RFP Number: _____

Supplier:

Date:

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

ACCEPTABLE COMMENT

1. Appropriate financial, equipment, facility, and personnel. _____
   YES NO
   _____

2. Ability to meet the delivery schedule. _____
   YES NO
   _____

3. Satisfactory period of performance. _____
   YES NO
   _____

4. Satisfactory record of integrity, not on declined or suspended listings. _____
   _____
   YES NO

5. Receipt of all necessary data from supplier. _____
   YES NO
   _____

6. Debarred and Suspended list has been checked _____
   YES NO
   _____
   and supplier is not listed

Completed by: _____ Date: _____
Print Name

J – PROCUREMENT PACKAGE REQUIRED FORMS

These are the required forms and certifications to be included in a procurement package. The forms have been adapted from the APTA Standard Bus Procurement Guidelines and from FTA regulations. The forms are to serve to certify compliance by the procuring agency and contractors with federal requirements.

Procurements of $249,999 or LESS

1. Overall Federal Regulation Compliance (certification from bidder/proposer)
2. Certification of Compliance with Bus Testing Requirements (certification from manufacturer)
3. Compliance with Specifications (certification from bidder/proposer)
4. Buy America Certification (certification from manufacturer) (**$150,000 or More)**

Procurements of $250,000 or MORE

1. Overall Federal Regulation Compliance (certification from bidder/proposer)
2. Certification of Compliance with Bus Testing Requirements (certification from manufacturer)
3. Compliance with Specifications (certification from bidder/proposer)
4. Debarment and Suspension Certification (certification from bidder/proposer)
5. Lobbying Certification (certification from bidder/proposer)
6. DBE Approval Certification (certification from bidder/proposer and manufacturer)
7. Pre-Award/Post Delivery Buy America Compliance
8. Pre-Award/Post Delivery Purchaser's Requirements
9. Pre-Award/Post Delivery FMVSS Compliance or Exemption Certification
10. Post-Delivery Purchaser's Requirements Certification (if more than 10 buses)

When the estimated cost of your procurement is very close to the $250,000 threshold, it is always a good idea to include all forms for "Procurements of $250,000 or MORE". You can then avoid unnecessary delays in your procurement process.

K - MICRO PURCHASE LOG

Micro Purchase Log

Date of Purchase	Item Description	Vendor	Price	Lead Time (if applicable)	Purchased?	Special Notes
11/15/2016	EXAMPLE: bus part	Fleet Pride	$159.67	2 days		
		NAPA	$120.45	1 day	Yes	
		Autozone	No response			
11/15/2016	EXAMPLE: van part	Fleet Pride	$159.67	1 day	Yes	
		NAPA	$120.45	2 weeks		
		Autozone	No response			

L – SMALL PURCHASE ORDER FORM

(For items greater than $10,000 and less than $250,000 with only one available vendor)

ITEM DESCRIPTION: _____

Form for Items available only from equipment manufacturer.

The item listed above is only available from the original manufacturer and the price COAST is paying for this item is no more than the price paid by other customers for similar volumes.

I hereby determine that the price COAST is paying is no more than other customers are paying for similar volumes because:

_____ It was obtained from a current published price list

_____ It was obtained from a current catalog

_____ It is similar to items procured from other vendors and also similar in price

_____ I have received copies of invoices for these items from the manufacturer that I have verified with at least one other customer. This is the only acceptable method of determination allowed for a single order of items over $10,000. I have attached a copy of the invoice to this determination and will forward it along with other purchasing information to accounts payable.

Customer Name: _____

Contact Name: _____

Date of Contact: _____

Signed: _____ Date: _____

M – ACKNOWLEDGMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda to the documents:

Addendum No.:_____, Dated _____

Addendum No.:_____, Dated _____

Addendum No.:_____, Dated _____

Addendum No.:_____, Dated _____

Addendum No.:_____, Dated _____

Offeror:

Name

Street Address

_____
City, State and Zip Code

_____
Signature of Authorized Officer

_____
Printed Name of Authorized Officer

Title

Date

_____
Phone Number

N – PURCHASE ORDER

Cooperative Alliance for Seacoast Transportation
COAST
42 Sumner Drive
Dover, NH 03820

DATE: _____
P.O. Number:

VENDOR
[Name}
[Company Name]
[Street Address]
[City, ST Zip]
[Phone]

SHIP TO
[Attn: Name]
COAST
42 Sumner Drive
Dover, NH 03820
603-743-5777

Requisition	Ship Via	Shipping Terms

Item	Description	Qty	Unit Price	TOTAL
			Subtotal	$
			S & H	$
			TOTAL	$

Other Comments or Special Instructions

Authorized By Date

O – REQUIRED FEDERAL CLAUSES REFERENCE

REQUIRED THIRD-PARTY CONTRACT CLAUSES

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
ALL FTA-Assisted Third-Party Contracts and Subcontracts		
No federal government obligations to third-parties by use of a disclaimer.		§2.f
Program fraud and false or fraudulent statements and related acts.		§3.f
Access to Records		§10.a
Federal changes		§2.c(3)(d)
Civil Rights (EEO, Title VI & ADA)		§13
Incorporation of FTA Terms	Per FTA C 4220.1F	§17.a
Energy Conservation		§30
Awards Exceeding $10,000		
Termination provisions	49 CFR Part 18 Not required of states	§12
Awards Exceeding $25,000		
Debarment and Suspension	2 CFR Parts 180 and 1200	§3.b
Awards Exceeding the Simplified Acquisition Threshold ($100,000)		
Buy America	When tangible property or construction will be acquired	§16.a
Provisions for resolution of disputes, breaches, or other litigation		§96
Awards Exceeding $100,000 by Statute		
Lobbying		§3.d
Clean Air		§17.m
Clean Water		§17.m
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§16.b
Fly America	When property or persons transported by air	§16.c
Construction Activities		
Davis Bacon Act	Except for contracts <$2,000 or third party contracts for supplies, materials, or articles ordinarily available on the open market.	§28.a
Copeland Anti-Kickback Act Section 1 Section 2	 All Contracts >$2,000	§28.a
Contract Work Hours & Safety Standards Act	Contracts >$100,000	§28.a
Bonding for construction activities exceeding $100,000	5% bid guarantee; 100% performance bond; and	§17.p(1)

	Payment bond equal to: • 50% for contracts < $1 M • 40% for contracts > $1 M, but < $5 M • 2.5 M for contracts > $5 M Not required of states	
Construction Activities continued		
Seismic Safety	Contracts for construction of new buildings or additions to existing buildings	§26.e
Nonconstruction Activities		
Nonconstruction Employee Protection (Contract Work Hours and Safety Standards Act)	Applicable to all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) > $100,000	§28.b
Transit Operations		
Transit Employee Protective Arrangements	Applies to Section 5307, 5309, 5311, 5316 projects	§28.d
Charter Service Operations		§32
School Bus Operations		§33
Drug and Alcohol Testing	Safety sensitive functions. Applies to Section 5307, 5309 and 5311 projects	§40.b
Planning, Research, Development, and Documentation Projects		
Patent Rights		§19
Rights in Data and Copyrights		§20
Miscellaneous Special Requirements		
Disadvantaged Business Enterprises (DBEs)	Contracts awarded on the basis of a bid or proposal offering to use DBEs	§13.d
Prompt Payment and Return of Retainage	Per 49 CFR Part 26, if grantee meets the threshold for a DBE program	§13.d
Recycled Products	Contracts for items designated by EPA, when procuring $10,000 or more per year	§17.1
ADA Access	Contracts for rolling stock or facilities construction/renovation	§13.g
Assignability Clause	Piggyback procurements	§17.a
State Requirements		
Special Notification Requirements for States		§42

P – FEDERAL CLAUSE MATRIX

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchases	Construction	Materials & Supplies
No federal government obligations to third-parties by use of disclaimer	All	All	All	All	All
Program fraud and false or fraudulent statements and related acts	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal Changes	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Energy Conservation	All	All	All	All	All
Termination Provisions (not required of states)	>$10,000	>$10,000	>$10,000	>$10,000	>$10,000
Debarment and Suspension	>$25,000	>$25,000	>$25,000	>$25,000	>$25,000
Buy America			>$150,000	>$150,000	>$150,000 (for steel, iron, manufactured Products)
Provisions for resolution of disputes, breaches, or other litigation	>$250,000	>$250,000	>$250,000	>$250,000	>$250,000
Lobbying	>$250,000	>$250,000	>$250,000	>$250,000	>$250,000
Clean Air	>$250,000	>$250,000	>$250,000	>$250,000	>$250,000
Clean Water	>$250,000	>$250,000	>$250,000	>$250,000	>$250,000
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel

Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air
Davis Bacon Act				>$2,000 (including ferry vessels)	
Copeland Anti-Kickback Act Section 1 Section 2				All >$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>$250,000	>$250,000	>$250,000 (including ferry vessels)	
Bonding (not required of states)				>$250,000 (including ferry vessels)	

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A &E	Operations/ Management/ Subrecipients	Rolling Stock Purchases	Construction	Materials & Supplies
Seismic Safety	A&E for new buildings and additions			New buildings and additions	
Transit Employee Protective Arrangements		Transit Operations funded with Section 5307, 5309, 5311 or 5316 funds			
Charter Service Operations		All			
School Bus Operations		All			
Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309			

		or 5311 funds			
Patent Rights	Research & development				
Rights in Data and Copyrights requirement	Research & development				
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Prompt Payment	All if threshold for DBE is met	All if threshold for DBE is met	All if threshold for DBE is met	All if threshold for DBE is met	All if threshold for DBE is met
Recycled Products		Contracts for items designated by EPA, when procuring $10,000 or more per year		Contracts for items designated by EPA, when procuring $10,000 or more per year	Contracts for items designated by EPA, when procuring $10,000 or more per year
ADA Access	A&E	All	All	All	
Veterans Employment				All	
Special Notification Requirements for States	Limited to states	Limited to states	Limited to states	Limited to states	Limited to states
Privacy Act	Contracts with personal identifier files	Contracts with personal identifier files	Contracts with personal identifier files	Contracts with personal identifier files	Contracts with personal identifier files
Bus Testing			All		

Q – FEDERAL CLAUSES LANGUAGE

COOPERATIVE ALLIANCE FOR SEACOAST TRANSPORTATION
(COAST)

REQUIRED FEDERAL CONTRACT CLAUSES
FOR FTA-FUNDED PROCUREMENTS

Fly America Requirements

49 U.S.C. §40118, 41 CFR Part 301-10

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

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

Buy America Requirements

49 U.S.C. 5323(j), 49 CFR Part 661

Applicability to Contracts
The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $100,000).

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the

product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

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

Charter Bus and School Bus Requirements

49 U.S.C. 5323(d), 49 CFR Part 604 and 49 U.S.C. 5323(F), 49 CFR Part 605

Applicability to Contracts
These requirements apply to the following type of contract: Operational Service Contracts.

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR 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 under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

School Bus Operations - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

Cargo Preference Requirements

46 U.S.C. 1241, 46 CFR Part 381

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

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. *to use* privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. *to furnish within* 20

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

Seismic Safety Requirements

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

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 Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

Energy Conservation Requirements

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

Applicability to Contracts
The Energy Conservation requirements are applicable to all contracts.

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.

Clean Water Requirements

33 U.S.C. 1251

Applicability to Contracts
The Clean Water requirements apply to each contract and subcontract which exceeds $100,000.

Clean Water –

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

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

Bus Testing

49 U.S.C. 5318(e), **49 CFR Part 665**

Applicability to Contracts
The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

Pre-award and Post Delivery Audits Requirements

49 U.S.C. 5323, 49 CFR Part 663

Applicability to Contracts
These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self- certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

Lobbying

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

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

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

Access to Records and Reports

49 U.S.C. 5325, **18 CFR 18.36 (i)**, **49 CFR 633.17**

Applicability to Contracts
The Access to Records and Reports requirements are applicable to all contracts.

Access to Third Party Contract Records
1. Where the Purchaser is not a state but a local government and is the FTA Recipient or a subrecipient of the FTA Recipient in accordance with 49 CFR 18.36(i), [insert Contractor]agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of [insert Contractor] that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. [Insert Contractor]also agrees, pursuant to 49 CFR 633.17, to provide the FTA Administrator or his authorized representatives, including any PMO Contractor, access to [insert Contractor]'s records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs at 49 USC 5307, 5309, or 5311.

2. Where the Purchaser is a state and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 633.17, [insert Contractor] agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to [insert Contractor]'s records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309, or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other nonprofit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 19.48, [insert Contractor] agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers, and records of [insert Contractor] that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, [insert Contractor] shall make available records related to the contract to the Purchaser, the Secretary of Transportation, and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

6. [Insert Contractor] agrees to maintain all books, records, accounts, and reports required under this contract for a period of 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 [insert Contractor] agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

Federal Changes

49 CFR Part 18

Applicability to Contracts
The Federal Changes requirement applies to all contracts.

Federal Changes -
[Insert 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. [Insert Contractor]'s failure to so comply shall constitute a material breach of this contract.

Bonding Requirements

Applicability to Contracts
For those construction or facility improvement contracts or subcontracts exceeding $100,000.

Bid Bond Requirements (Construction)
Bid Security
A Bid Bond must be issued by a fully qualified surety company acceptable to COAST and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.
Rights Reserved
In submitting this Bid, it is understood and agreed by bidder that the right is reserved by COAST to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of COAST.

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

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

undersigned bidder agrees to indemnify COAST and pay over to COAST the difference between the bid security and COAST's total damages, so as to make COAST whole.

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

Performance and Payment Bonding Requirements (Construction)
The Contractor shall be required to obtain performance and payment bonds as follows:

Performance bonds
The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the COAST.

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

Payment bonds
The penal amount of the payment bonds shall equal:

- Fifty percent of the contract price if the contract price is not more than $1 million.
- Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
  Two and one half million if the contract price is more than $5 million.

If the original contract price is $5 million or less, COAST may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)
The Contractor may be required to obtain performance and payment bonds when necessary to protect COAST's interest.

The following situations may warrant a performance bond:

- COAST property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
- A contractor sells assets to or merges with another concern, and COAST, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
- Substantial progress payments are made before delivery of end items starts.
- Contracts are for dismantling, demolition, or removal of improvements.

When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

- The penal amount of performance bonds shall be 100 percent of the original contract price, unless COAST determines that a lesser amount would be adequate for the protection of COAST.

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

A payment bond is required only when a performance bond is required, and if the use of payment bond is in COAST's interest.

When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

The penal amount of payment bonds shall equal:

- Fifty percent of the contract price if the contract price is not more than $1 million;
- Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
- Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. COAST shall determine the amount of the advance payment bond necessary to protect COAST.

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

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

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

Clean Air

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

Applicability to Contracts
The Clean Air requirements apply to all contracts exceeding $100,000, including indefinite quantities where the amount is expected to exceed $100,000 in any year.

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

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

Recycled Products

42 U.S.C. 6962, **40 CFR Part 247**, **Executive Order 12873**

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

Recycled Products
[Insert Contractor] agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 USC 6962), including but not limited to the regulatory provisions of 40 CFR 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR 2472.

Davis-Bacon and Copeland Anti-Kickback Acts

Background and Application
The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts over $2,000 that "at least partly are financed by a loan or grant from the Federal Government." 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating."

(1) Minimum wages-

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

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

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

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

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

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

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

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

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

(3) Payrolls and basic records

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

apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

(4) Apprentices and trainees-

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

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

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

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

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

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

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

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

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

(10) **Certification of eligibility** –

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

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

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

Contract Work Hours and Safety Standards Act

Background and Application
The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work."

Contract Work Hours and Safety Standards

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

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

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

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of 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 paragraphs (1) through (4) of this section.

No Government Obligation to Third Parties

Applicability to Contracts
Applicable to all contracts.

No Federal Government Obligations to Third Parties
1. COAST and [insert 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 [insert Purchaser], [insert Contractor], or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

Program Fraud and False or Fraudulent Statements and Related Acts

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

Applicability to Contracts
These requirements are applicable to all contracts.

False Statements or Claims, Civil and Criminal Fraud
1. [Insert Contractor] acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 *et seq.* and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, [insert 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, [insert 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 [insert Contractor] to the extent the Federal Government deems appropriate.

2. [Insert 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 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on [insert Contractor], to the extent the Federal Government deems appropriate.

3. [Insert 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.

Termination

49 U.S.C. Part 18, FTA Circular 4220.1E

Applicability to Contracts
All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is $100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Termination for Convenience (General Provision) COAST may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to COAST to be paid the Contractor. If the Contractor has any property in its possession belonging to COAST, the Contractor will account for the same, and dispose of it in the manner COAST directs.

Termination (By Either Party)
Either party may terminate for failure of the other party to fulfill its obligations, as set forth within a specific contract. Reasonable allowances will be made for circumstances beyond the control of [insert Contractor] or [insert Recipient]. Written notice of the intent to terminate is required and shall specify the reasons supporting termination.

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, COAST may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by COAST 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, COAST, 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) COAST 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 COAST's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from COAST setting forth the nature of said breach or default, COAST 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 COAST 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 COAST elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by COAST shall not limit COAST 's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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

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, COAST may terminate this contract for default. COAST shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

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, COAST may terminate this contract for default. COAST shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of COAST, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and COAST shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the COAST may terminate this contract for default. COAST shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's

right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

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

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

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

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

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

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

Termination for Convenience of Default (Cost-Type Contracts) COAST may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of COAST 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 COAST, or property supplied to the Contractor by COAST. If the termination is for default, COAST 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 COAST and the parties shall negotiate the termination settlement to be paid the Contractor.

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

Government-Wide Debarment and Suspension (Nonprocurement)

49 CFR Part 29, Executive Order 12549

Background and Applicability
The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed $25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29. 220(b).

Suspension and Debarment
The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. §6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. The Contractor agrees to, and assures that its subcontractors, lessees, third party contractors, and other participants at any tier of the Project will, review the "Excluded Parties Listing System," at **http://www.sam.gov/portal/public/SAM/** before entering into any subagreement, lease, third party contract, or other arrangement in connection with the Project.

Privacy Act

5 U.S.C. 552

Applicability to Contracts
When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to 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, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The

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.

The Contractor also agrees to 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.

Civil Rights Requirements

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

Applicability to Contracts
The Civil Rights Requirements apply to all contracts.

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

1. **Title VI** – During the performance of this contract, [insert Contractor], for itself, its assignees, and successors in interest, agrees as follows:

a) Compliance with Regulations: [Insert Contractor] shall comply with the Regulation relative to nondiscrimination in federally assisted programs of the Department of Transportation 49 CFR 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b) Nondiscrimination: [Insert Contractor], with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. [Insert Contractor] shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by [insert Contractor]for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by [insert Contractor] of [insert Contractor]'s obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d) Information and Reports: [Insert Contractor] shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by [insert Recipient] or [insert name of appropriate administration] to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information [insert Contractor] shall so certify to [insert Recipient], or [insert name of appropriate administration], as appropriate, and shall set forth what efforts it has made to obtain the information.

e) Sanctions for Noncompliance: In the event of [insert Contractor]'s noncompliance with the nondiscrimination provisions of this contract, [insert Recipient] shall impose such contract sanctions as it or [insert name of appropriate administration] may determine to be appropriate, including, but not limited to:

i. Withholding of payments to [insert Contractor] under the contract until [insert Contractor] complies, and/or

ii. Cancellation, termination, or suspension of the contract, in whole or in part.

f) Incorporation of Provisions: [Insert Contractor] shall include the provisions of paragraphs (a) through (f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

[Insert Contractor] shall take such action with respect to any subcontractor procurement as [insert Recipient] or [insert name of appropriate administration] may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, [insert Contractor] may request [insert Recipient] to enter into such litigation to protect the interest of [insert Recipient], and, in addition, [insert Contractor] may request the United States to enter into such litigation to protect the interests of the United States.

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

2. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

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

b) Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC 623 and federal transit law at 49 USC 5332, [insert Contractor]agrees to refrain from

discrimination against present and prospective employees for reason of age. In addition, [insert Contractor] agrees to comply with any implementing requirements FTA may issue.

c) Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, [insert Contractor] agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR 1630, pertaining to employment of persons with disabilities. In addition, [insert Contractor] agrees to comply with any implementing requirements FTA may issue.

3. [Insert Contractor] also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Breaches and Dispute Resolution

49 CFR Part 18, FTA Circular 4220.1E

Applicability to Contracts
All contracts in excess of $100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

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 COAST's [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

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

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between COAST 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 COAST 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 COAST, (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.

Patent and Rights in Data

37 CFR Part 401, 49 CFR Parts 18 and 19

Applicability to Contracts
Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

PATENT RIGHTS
Irrespective of the status of the Recipient, subrecipient, or third party contractor (for example, a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, individual, and so forth) the Common Grant Rules require provisions consistent with Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms," 37 CFR 401 (implementing 35 U.S.C. 200 *et seq.*), unless the Federal Government requires otherwise. 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 to the invention for Federal Government purposes.

RIGHTS IN DATA AND COPYRIGHT REQUIREMENTS
Publication Restrictions: Except for its own internal use, neither [insert Recipient] nor [insert third party contractor] may publish or reproduce subject data in whole or in part, or in any manner or form, without the advance written consent of the Federal Government, unless the Federal Government has released or approved the release of that data to the public. These restrictions do not apply to an institution of higher education.

Distribution of Data: Except for contracts for adaptation of automatic data processing equipment or data provided in support of an FTA capital project, [insert Recipient] and [insert third party contractor] agree that, in addition to the rights in data and copyrights that it must provide to FTA under the Common Grant Rules, FTA may make available to any FTA Recipient or 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, for any reason, the project is not completed, all data developed under the project is expected to be delivered as FTA may direct.

Transit Employee Protective Agreements

49 U.S.C. § 5310, § 5311, and § 5333, 29 CFR Part 215

Applicability to Contracts
The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Transit Employee Protective Arrangements
a) General Transit Employee Protective Requirements – To the extent that FTA determines that transit operations are involved, [insert 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 USC A 5333(b), and USDOL guidelines at 29 CFR 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the USDOL to FTA applicable to the FTA Recipient's project from which federal assistance is provided to support work on the underlying contract. [Insert Contractor] agrees to carry out that work in compliance with the conditions stated in that USDOL letter. The requirements of this subsection, 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 USC 5310(a)(2), or for projects for nonurbanized areas authorized by 49 USC 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

b) Transit Employee Protective Requirements for Projects Authorized by 49 USC 5310(a)(2) for Elderly Individuals and Individuals with Disabilities – If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 USC 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 USC 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, [insert 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 USC 5333(b), USDOL guidelines at 29 CFR 215, and any amendments thereto. These terms and conditions are identified in the USDOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. [Insert Contractor] agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that USDOL letter.

c) Transit Employee Protective Requirements for Projects Authorized by 49 USC 5311 in Nonurbanized Areas – If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 USC 5311, [insert 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 USDOL or any revision thereto. [Insert Contractor] also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with federal assistance provided by FTA.

Disadvantaged Business Enterprise (DBE)

49 CFR Part 26

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

Disadvantaged Business Enterprises

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is **__ %.** A separate contract goal **[of __ % DBE participation has] [has not]** been established for this procurement.

2. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as COAST deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

3. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

a. The names and addresses of DBE firms that will participate in this contract;
b. A description of the work each DBE will perform;
c. The dollar amount of the participation of each DBE firm participating;
d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
e. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
f. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above [as a matter of responsiveness] [with initial proposals] [prior to contract award] (see 49 CFR 26.53(3)).

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

4. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from COAST. In addition, [the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to

those subcontractors within 30 days after incremental acceptance of the subcontractor's work by COAST and contractor's receipt of the partial retainage payment related to the subcontractor's work.]

5. The Contractor must promptly notify COAST, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of COAST.

Intelligent Transportation Systems – National Architecture

SAFETEA-LU Section 5307, 23 USC 512

Applicability to Contracts
ITS terms apply to all contracts.

Conformance with National ITS Architecture
Intelligent transportation system (ITS) property and services must comply with National ITS Architecture and Standards to the extent required by Section 5307 (c) of SAFETEA-LU, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66FR 1455 *et seq.*; January 8, 2001, and later published policies or implanting directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with federal requirements.

Incorporation of Federal Transit Administration (FTA) Terms

FTA Circular 4220.1E

Applicability to Contracts
The incorporation of FTA terms applies to all contracts.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E 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 COAST requests which would cause COAST to be in violation of the FTA terms and conditions.

Drug Use and Alcohol Misuse and Testing

49 U.S.C. §5331, **49 CFR Parts 653 and 654**

Applicability to Contracts
The Drug and Alcohol testing provisions apply to Operational Service Contracts. Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

DRUG USE AND ALCOHOL MISUSE AND TESTING: To the extent applicable, the Contractor agrees to comply with the following Federal substance abuse regulations and guidance:

Drug-Free Workplace: U.S. DOT regulations, "Government-wide Requirements for Drug-Free Workplace (Financial Assistance," 2 C.F.R. Part 182, and U.S. DOT regulations, "Government-wide Requirements for Drug-Free Workplace (Financial Assistance), 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§701 *et seq.*, including any amendments to these U.S. DOT regulations when they are promulgated. [*U.S. OMB published final Drug-Free Workplace guidance in 74 Fed. Reg. 28149 et seq., on June 15, 2009.]*

Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. §5331.

Access for Individuals with Disabilities

49 U.S.C. 5301

The Contractor agrees to comply with 49 U.S.C. §5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable, including:

1. USDOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. 37;
2. USDOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Assistance," 49 C.F.R. 27;

3. Joint U.S. Architectural and Transportation Barriers Compliance Board/USDOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. 1192 and 49 C.F.R. 38;
4. USDOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Service,” 28 C.F.R. 35;
5. USDOJ regulations, “Nondiscrimination on the Basis of Disability in Public Accommodations and in Commercial Facilities,” 28 C.F.R. 36;
6. U.S. General Services Administration (U.S. GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. 101.19;
7. U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. 1630;
8. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. 64, Subpart F;
9. U.S. ATBCB regulations, “Electronic and Informati9on Technology Accessibility Standards,” 36 C.F.R. Part 1194;
10. FTA regulations, “Transportation for Elderly and Handicapped Persons, 49 C.F.R. 609;
11. Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

Veteran’s Employment

49 U.S.C. 5325 (k)

As provided by 49 U.S.C. § 5325(k): a. To the extent practicable, Contractor agrees that it: 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and b. Contractor also assures that its sub-recipients will: 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

R - BUS TESTING CERTIFICATION

CERTIFICATION OF COMPLIANCE WITH FTA'S
BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date _____ Signature _____

Company Name _____

Title

S – BUY AMERICA CERTIFICATION

CERTIFICATION OF COMPLIANCE WITH FEDERAL BUY AMERICA REQUIREMENTS

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

Certificate of Compliance with 49 U.S.C. 5323(j)(1)
The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date

Signature _____

Company Name _____

Title

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)
The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date

Signature _____

Company Name _____

Title

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

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).
The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date

Signature _____

Company Name _____

Title

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)
The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date

Signature _____

Company Name _____

Title

T – DBE TRANSIT VEHICLE MANUFACTURER CERTIFICATION

DBE TRANSIT VEHICLE MANUFACTURER CERTIFICATION

_____ (Name of Manufacturer), a TVM, hereby certifies that it has complied with the requirement of Section 26.49 of 49 C.F.R. Part 26, by submitting a current annual DBE goal to FTA. The goals apply to Federal Fiscal Year _____ (October 1, _____ to September 30, _____) and have been approved or not disapproved by FTA.

_____ (Name of Contract Vendor), hereby certifies that the manufacturer of the transit vehicle to be supplied _____ (Name of Manufacturer) has complied with the above referenced requirement of Section 26.49 of 49 C.F.R. Part 26.

Date:

Signature: _____

Title:

Manufacturer: _____

U – CERTIFICATION REGARDING LOBBYING

Instructions: To be submitted with each bid or offer exceeding $100,000 as required by 42 CFR Part 20.

Certification for Contracts, Grants, Loans and Cooperative Agreements

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

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

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

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

Date

V – PROCUREMENT MANUAL RECEIPT AND ACKNOWLEDGEMENT FORM

I acknowledge that I have received a copy of COAST's Procurement Manual.

I agree to read it thoroughly, including the statements in the foreword describing the purpose and effect of the Manual. I agree that if there is any policy or provision in the Manual that I do not understand, I will seek clarification from my direct supervisor or the Executive Director. I understand that it is my responsibility to follow the guidance contained within this Manual. In addition, I understand that this Manual states COAST's policies and practices in effect on the date of revision, and that any rules or policies described in the Procurement Manual may be modified or varied by COAST at any time.

I understand that this version of the Procurement Manual supersedes and replaces all previous manuals, handbooks, policies, procedures, and understandings.

I understand that my signature below indicates that I have read and understood the above statements.

Please sign and date this receipt and return it to Human Resources.

EMPLOYEE'S NAME (printed): _____

EMPLOYEE'S SIGNATURE: _____

DATE: _____