



To be published in the *The Hattiesburg Post* and the *Clarion Ledger* in the Thursday, May 30, 2019 and Thursday, June 6, 2019 in the Classified Ad Section Block Style on behalf of the City of Hattiesburg, Mississippi.

Please prepare a ***PROOF OF PUBLICATION*** and remit to the City Clerk, City of Hattiesburg, P.O. Box 1898, Hattiesburg, Mississippi 39403-1898. **TEAR SHEETS ARE NOT ACCEPTABLE AS PROOFS.**

## **NOTICE TO BIDDERS**

NOTICE is hereby given that the Mayor and Council of the City of Hattiesburg, Mississippi will receive sealed proposals/bids relative to certain services for Hub City Transit until 10:00 a.m., Tuesday, July 2, 2019 in the City Clerk's Office in the City Hall of said City, to-wit:

### **Paratransit Transportation Services**

The above shall propose/bid upon and deliver as per detailed specifications on file in the Office of the City Clerk, P.O. Box 1898, 200 Forrest Street, Hattiesburg, Mississippi, 39403-1898, (601) 545-4552 which may be obtained upon request and on line at [www.hattiesburms.com/public-notices](http://www.hattiesburms.com/public-notices).

Each PROPOSAL/BID must be received in a sealed envelope which is marked in the lower left-hand corner with the work "PROPOSAL/BID" and the NAME OF THE ITEM on which proposal/bid is being and the DATE OF BID OPENING.

The best bid received will be accepted, subject to the provisions of Section 31-7-13 of the Mississippi Code of the Mississippi Code of 1972, Annotated as Amended, and other applicable State law; but the Council reserves the right to reject any or all bids received and to waive informalities.

PUBLISHED by Order of the Council on this the 21st day of MAY, 2019

CITY OF HATTIESBURG, MISSISSIPPI

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CITY CLERK

(S E A L)  
Published 5/30/19 & 6/6/19



## **Request for Proposals for Paratransit Transportation Services**

**Issue Date: May 21, 2019**

**Schedule:** Pre-proposal Meeting: June 10, 2019 at 11:00 a.m. (CDST)  
Written Questions Due: June 14, 2019 by 5:00 p.m. (CDST)  
Responses Published by: June 21, 2019 by 5:00 p.m. (CDST)  
Open Bids: July 2, 2019 10:00 a.m. (CDST)

**Submission Instructions:**

One (1) original plus Three (3) copies (4 copies total) of the submittal must be returned in a sealed envelope, and be clearly marked "PARATRANSIT RFP"

**Contact:** Questions or comments regarding the RFP may be submitted in writing until 5:00 p.m. 14<sup>th</sup> day of June, 2019 should be directed to:

Calvin Russell  
Hattiesburg-Petal-Forrest-Lamar Metropolitan Planning Organization  
P.O. Box 1898  
Hattiesburg, MS 39401  
Fax: (601) 545-6327  
or e-mail: [mpo@hattiesburgms.com](mailto:mpo@hattiesburgms.com)

Email is preferred



**Submission Instructions:**

One (1) original plus Three (3) copies (4 copies total) of the submittal must be returned in a sealed envelope, and be clearly marked **“PARATRANSIT RFP.”**

**SUBMITTALS SHOULD BE MAILED OR HAND DELIVERED TO:**

**Mailing Address:**

City of Hattiesburg, Mississippi  
Office of City Clerk  
P.O. Box 1898  
Hattiesburg, MS 39403-1898

**Delivery Address:**

City of Hattiesburg, Mississippi  
Office of City Clerk  
200 Forrest St  
Hattiesburg, MS 39401

**PROPOSAL DEADLINE:** July 2, 2019 10:00 a.m. (CDST)

No proposal shall be received by facsimile or via electronic mail.

**Anticipated Contract Term:** October 1, 2019 – September 30, 2020

**PRE-PROPOSAL CONFERENCE** will be held at

**11:00 A.M. On 10<sup>th</sup> day of June, 2019**

City of Hattiesburg Council Chambers  
2<sup>nd</sup> Floor City Hall/200 Forrest Street  
Hattiesburg, MS 39401

The purpose of this conference will be to review the attached specifications for **PARATRANSIT PASSENGER TRANSPORTATION SERVICES** to be provided to the Hattiesburg Urbanized area outside the Hub City Transit service area, on behalf of the City of Hattiesburg Department of Urban Development.

You are encouraged to attend or to be represented at the Pre-Proposal Conference if you plan to submit a proposal. Further details of the COH's requirements will be addressed at this time. \*Questions or comments regarding the RFP may be submitted in writing until 5:00 p.m. 14<sup>th</sup> day of June, 2019 to:

Calvin Russell  
Hattiesburg-Petal-Forrest-Lamar Metropolitan Planning Organization  
P.O. Box 1898  
Hattiesburg, MS 39401  
Fax: (601) 545-6327  
or e-mail: [mpo@hattiesburgms.com](mailto:mpo@hattiesburgms.com)  
*\*Email is preferred*

**Proposals will be received until 10:00 a.m. July 2, 2019.**



**CITY OF HATTIESBURG (COH) REQUEST FOR PROPOSALS  
PARATRANSIT PASSENGER TRANSPORTATION SERVICES**

**TRANSMITTAL LETTER  
FY 2019**

It is certified that this proposal is made in good faith and without collusion with any other person bidding on this contract or with any officer or employee of the City of Hattiesburg.

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

\_\_\_\_\_  
COMPANY (as identified with the Office of Secretary  
of State of Mississippi)

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
TYPED NAME AND TITLE

\_\_\_\_\_  
FEDERAL IDENTIFICATION #

\_\_\_\_\_  
MAILING ADDRESS (P.O. BOX OR STREET)

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
CITY, STATE AND ZIP CODE

\_\_\_\_\_  
FAX NUMBER

\_\_\_\_\_  
E-MAIL ADDRESS



## **REQUEST FOR PROPOSAL**

### **ISSUING AGENCY:**

The City of Hattiesburg, Department of Urban Development

### **SUBJECT:**

Paratransit Passenger Transportation Services

### **DUE DATE:**

Sealed proposals, including One (1) original plus Three (3) copies (4 copies total) must be received not later than **10:00 A.M. July 2, 2019**

### **Mail proposal to:**

City of Hattiesburg, Mississippi  
Office of City Clerk  
P.O. Box 1898  
Hattiesburg, MS 39403-1898

### **Hand deliver proposal to:**

City of Hattiesburg, Mississippi  
Office of City Clerk  
200 Forrest St  
Hattiesburg, MS 39401

With “**PARATRANSIT RFP**” indicated on envelope. Late submittals will not be considered.

## **1.0 GENERAL INFORMATION**

### **1.1 RFP PURPOSE**

This Request for Proposal (RFP) provides interested applicants (Applicant/Provider) with the information necessary to prepare and submit proposals to the COH. This document sets forth the requirements, expectations, and process that applicants must follow in order to be considered for a Contract with the COH. Applicants must describe all activities that are a part of the services to be provided. No capital purchases are included in this RFP. The COH may award one or more contracts for the services specified herein. The COH is seeking proposals from qualified transportation providers for rendering single and shared-passenger transportation services for individuals authorized by the City of Hattiesburg for related transportation services.



## 1.2 AUTHORITY

Proposals in response to this RFP and any Contracts awarded in connection with this RFP shall be governed in accordance with all applicable federal, state, and local laws and regulations.

## 1.3 SCOPE OF SERVICES

Paratransit service for individuals authorized by COH in a Demand-Response and Standing Order transportation service. A Standing Order Trip is defined as a trip to and from the same location at the same time on the same day(s) of the week. A Demand-Response Trip is defined as any trip not considered a Standing Order Trip. Advance reservations are required with both types of service. Round Trips will include origins and destinations within the city limits of Hattiesburg, MS and outside of the city limits, but within the Hattiesburg Urbanized area. The majority of these trips may require child day care transportation trips in conjunction with parent work trips. Some may require a wheelchair lift-equipped vehicle and that type of service must be provided; trips in which such equipment is required shall be billed at the same rate as trips not requiring such equipment.

**Service Times:** Providers must be available at times HCT's fixed route services are available currently. Monday through Friday 6:30 a. m. - 6:30 p. m.

**Current System:** Hub City Transit currently operates the Paratransit program in-house. Through the fiscal year ending September 30, 2018, there were approximately 842 approved/eligible passengers of the Paratransit system. Some passengers utilize the system regularly, while others utilize the system far less frequently. A summary of use is provided below.

Fiscal Year	Trips Completed	No Show	Same Day Cancel	Completed Trip Duration (hrs); Scheduled / Repo	Completed Trip Distance (miles)
2017	5,552	185	600	2,281 / 2,348	33,273
2018	6,685	299	1,040	2,516 / 2,638	37,590

A two year (FY 2017 & 2018) summary of trip purpose is provided below:

Purpose	Percentage
Education	1%
Medical / Pharmacy	27%
Personal / Misc.	24%
Physical Therapy	10%
Shopping	6%
Social / Senior	13%
Work	19%



Currently, Hub City Transit collects no fare from Paratransit passengers.

## **1.4 SERVICE REQUIREMENTS**

### **A. PROVIDER VEHICLES**

1. The Provider shall use only vehicles owned or leased and operated by the Provider for provision of services and shall provide sufficient vehicle back-up capacity in case of breakdowns.
2. All vehicles operating under a Contract with the COH must comply with or exceed the safety, mechanical, and operating standards of the State of Mississippi and/or the City of Hattiesburg and maintained under a preventative maintenance program.
3. All vehicles must provide appropriate safety equipment, first aid kit, blood borne pathogens, triangles, etc.
4. All vehicles must be clearly marked with the Provider's name as to allow passengers to easily identify its vehicles.
5. Provider is expected to perform pre-trip inspections of vehicles to be used under a Contract with the COH; vehicles failing the daily inspection shall not be used until deficiencies are corrected.
6. The Provider shall provide a means of communications between and among its dispatchers and vehicle drivers.
7. SERVICE PROVIDERS under contract to COH shall comply with the U.S.DOT Drug and Alcohol Testing Regulations 49 CFR Part 40 and Part 655. This also includes all drivers subcontracted by any SERVICE PROVIDER. Drivers and other safety sensitive employees shall successfully pass an approved pre-employment drug and alcohol screening prior to being employed on active service.

### **B. PROVIDER DRIVERS**

All drivers employed or subcontracted by the Provider:

1. Shall maintain a valid appropriate Mississippi driver's license,
2. Shall have a satisfactory criminal records background check conducted by the Provider,



3. Must be trained to drive vehicles that serve public transportation to include but not limited to defensive and safe driving. Provider shall maintain written documentation of such training provided to its drivers,
4. Shall not smoke in the vehicle or use smokeless tobacco products while transporting passengers,
5. Shall be neat and clean in appearance when transporting passengers and do not utilize cell phones while transporting.

### **C. OTHER PROVIDER SERVICE REQUIREMENTS**

1. Provider must ensure the maintenance of sufficient staff, facilities and equipment to deliver the agreed upon services.
2. Provider must attend scheduled or requested meetings with COH to discuss problems, procedures and/or needed adjustments to service delivery.
3. Provider must be certified by the Mississippi Office of the Secretary of State (non-profit providers are eligible but must be listed with the Office of the Secretary of State as such).
4. Provider's transit vehicle shall pick up and discharge passengers at the closest reasonable location to the front of their home or destination, taking safety of the passengers, the driver, and the motoring public into consideration. The driver shall be responsible for assisting passengers to/from the first door of their home or destination. The driver shall be responsible for assisting the passenger to ensure child safety-seats are properly secured in the vehicles before operating vehicles with children under the age of eight years (or as required by law).
5. Provider's transit vehicle shall pick up passengers from origin pick up location within 15 minutes of scheduled pick up time and must pick up return trip passengers within 1 hour of notification that the passenger is ready for the return trip. The Provider must provide proper restraints for disabled passengers.
6. Children under the age of 8 years (or as required by law) shall be transported in a size and weight appropriate child safety seat that is provided by the child's Parent or Guardians. The Service Provider shall not be expected to provide such safety seats but must refuse to transport a child until such time the appropriate safety seat is provided.
7. Provider shall notify the COH by telephone within one-half hour and report in writing within 24 hours of the below listed occurrences:
  - a) A collision between Provider's vehicle in which a COH client is a passenger and another vehicle, person or object;





- b) Any passenger complaint, accident, or illness while being transported under a Contract between Provider and the COH.
8. Providers must report all 'no-shows' and "change of schedules" on a monthly basis.
9. Provider's driver shall wait for an assigned passenger for a maximum of five (5) minutes at the pick-up location before leaving the pick-up location and reporting the 'no-show trip to the COH.
10. Passengers shall pay, and the provider shall collect, any fare designated by the COH, which shall not exceed twice the standard fixed route rate for Hub City Transit (currently \$1.00 based on the current fixed route rate of \$0.50). Fares charged to passengers are subject to approval by the COH. Exact fare shall be determined by the COH prior to the commencement of services herein described.
11. Every effort must be made by Provider to provide transportation for Paratransit related activities during inclement weather.
12. The Provider, employees of the Provider, or subcontractors of the Provider shall be subject to the confidentiality laws of the State of Mississippi.
13. Provider program records and documentation must be open to COH, the Mississippi Department of Transportation (MDOT), and the Federal Transit Administration (FTA) personnel to monitor for state and federal compliance.
14. The Provider will be responsible for the authorization of passengers eligible for the Paratransit program. As follows:
- a) Provider shall only transport individuals authorized by the COH for Paratransit service and their children.
  - b) Passengers shall request transportation services no later than 3:00 PM on the day before a requested trip except in extreme circumstances.
  - c) Provider shall enforce the COH "No Show" policy, which includes a loss of transportation services for missing 2 or more scheduled trips, failure to give 24 hours' notice of cancellation for a scheduled trip, and unruly behavior.

## **1.5 PROPOSAL CONTENT and CRITERIA**

All materials submitted in response to this proposal will become the property of COH. Responses to this RFP must correlate with the numeric characters in the RFP. Each item in the RFP should be addressed in Applicant's proposal. An original and three (3) copies



of the complete proposal for this contract must be submitted in a sealed envelope and must contain the following:

1. A transmittal letter signed and dated by an individual authorized to bind the bidder legally must accompany each proposal. Evidence must be submitted showing the individual's authority to bind the bidder. The transmittal letter must bear the name of the firm.
2. A cover sheet that includes the applicant's identification information including business mailing address, phone and fax numbers, person(s) to be contacted, and Federal Tax ID Number.
3. A brief (not to exceed 5 double-spaced pages) narrative that describes:
  - a) A history and overview of the Applicant agency
  - b) Number and location of local and headquarter offices
  - c) Agency's experience in providing services requested
  - d) Agency's mediation procedures for customer complains
  - e) Year, manufacture/model, & seating capacity of any Agency vehicles to be used; include how many are equipped with wheelchair lift.
  - f) Planned schedule for the replacement and/or expansion purchases for vehicles to be used in providing this service, including vehicle details for proposed purchases.
4. Copy of last fiscal year audit. If the provider is a new firm, documents from the providers financial institution and/or accountant showing the company's financial stability.
5. The names of three references, each including a specific contact name and phone number. References should be able to attest to the ability of applicant to provide the services requested. No COH employees may be used as references.
6. Fee for service. The proposal must include details of the basis for which the provider proposes to charge for the provision of services. Details should include two scenarios: Option 1 being a scenario in which no fare is collected from passengers and Option 2 being a scenario in which passengers are charged a fare of \$1.00. Other required details include the amount and basis of any charge to the COH (amount per mile, amount per mile over X, amount per passenger, amounts in certain zones, flat fees, etc.). Details may also include alternate bases of charging that the proposer may be open to consider through follow-up negotiation.
7. Include details on any limitations of the provider's staffing and/or capital equipment as it may relate to the number of passengers that can be served at any given period of time.
8. Other information that a bidder believes to be pertinent but not specifically requested elsewhere in this Request for Proposal.



9. The proposal must be typed in a 12-point font. The proposal should be organized in accordance with the selection criteria noted in Section 5.0.

Proposals not in compliance with these requirements or submitted after the deadline will not be considered under the review process.

## **1.6 TERM OF CONTRACT**

The contract term shall begin upon signatories and ending September 30, 2020 unless extended by mutual agreement of the parties.

## **1.7 PAYMENT**

Billing to COH will be on a monthly basis. Provider's monthly invoice shall be accompanied by a transportation log that contains:

- a) Authorized passenger names
- b) Pickup and Destination street address
- c) Date of trips
- d) Total monthly miles
- e) Total monthly hours

Following contract approval, the COH will pay all invoices for documented fees and charges within thirty (30) days of receipt of Provider's invoices.

## **1.8 SCHEDULE OF ACTIVITIES**

The events leading to the consideration of an award of a contract associated with this RFP are as follows:

Issue Notices: Request for Proposals:	May 30, 2019
Bidders' Conference:	June 10, 2019 at 11:00 a.m.
Proposals Due:	July 2, 2019 at 10:00 a.m.
Panel Review of Proposal (estimated):	July 16, 2019
*Determine Bid(s) Recommendation: on or before:	July 26, 2019
Commence Services:	October 1, 2019

\*All applicants will be notified of bid recommendations after this date. Award notices to successful applicants will be tentative pending approval by the Mayor and City Council and MDOT.



## **1.9 PROPOSAL DEADLINE**

All proposals must be received by 10:00 a.m. on July 2, 2019 as follows:

### **By Mail:**

City of Hattiesburg, Mississippi  
Office of City Clerk  
P.O. Box 1898  
Hattiesburg, MS 39403-1898

### **By Hand:**

City of Hattiesburg, Mississippi  
Office of City Clerk  
200 Forrest St  
Hattiesburg, MS 39401

## **1.10 BIDDERS CONFERENCE**

Applicants who have questions about this RFP may attend Bidders conference to be held beginning **at 11:00 A.M. on June 10, 2019** in the City of Hattiesburg Council Chambers, 2<sup>nd</sup> Floor City Hall, 200 Forrest Street, Hattiesburg, MS 39401.

The purpose of this conference is to answer questions about this RFP.

## **2.0 ADMINISTRATIVE REQUIREMENTS**

### **2.1 SOLE POINT OF CONTACT**

No questions regarding this RFP will be answered by MPO or HCT staff. Questions concerning this RFP should be provided in writing prior to 5:00 PM June 14, 2019 and directed to:

Calvin Russell, HPFL-MPO Division Manager  
Hattiesburg-Petal-Forrest-Lamar Metropolitan Planning Organization  
P.O. Box 1898  
Hattiesburg, MS 39401  
601-545-6259  
601-545-6327 FAX  
or e-mail: [mpo@hattiesburgms.com](mailto:mpo@hattiesburgms.com)

Email is preferred.

### **2.2 RESPONSE EXPENSE**

The COH assumes no liability for expenses incurred by Providers resulting from response to this Request for Proposal.

### **2.3 COMPENSATION TO THE SELECTED BIDDER**

The selected bidder will be compensated for providing the specified services at the rates, terms, and conditions established in the signed contract.



### **3.0 INFORMATION REQUIRED FROM THE BIDDER**

#### **3.1 BIDDER'S QUALIFICATIONS**

The proposal must contain any documents and other information the bidder deems necessary to demonstrate fully its qualifications and allow the COH to evaluate its ability to provide the service.

#### **3.2 SUBCONTRACTING**

The selected Providers shall not subcontract any part of the contracted services after award of the contract without written approval of COH. The selected Providers will require all subcontractors to comply with all provisions herein. Notwithstanding, the selected Providers will be held liable for compliance with all duties and functions required by the contract, whether performed by the Provider or an approved subcontractor.

### **4.0 INSURANCE REQUIREMENTS**

The Provider shall maintain for the duration of a contract, at its sole expense, the following insurance coverage:

#### **4.1 COMMERCIAL LIABILITY INSURANCE**

The Provider shall:

- a. Maintain insurance in compliance with the Mississippi Department Of Transportation Household Goods And Passenger Carriers Certificate Of Convenience And Necessity, Intrastate Guidelines. (Attachment A). Such insurance shall name COH, its officials, officers, and employees as insured, with respect to performance of the services of this contract. The coverage shall contain no special limitations on the scope of protection afforded to the above listed insurers.
- b) Shall be primary with respect to insurance or self-insured retention programs covering COH, its officials, officers, and employees.

#### **4.2 BUSINESS AUTOMOBILE LIABILITY INSURANCE**

The Provider shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,500,000 each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles used to provide services under this Agreement.



#### **4.3 WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE**

The Provider shall maintain workers' compensation insurance with the State of Mississippi statutory limits and employers' liability insurance with limits of not less than \$100,000 each accident.

#### **4.4 OTHER INSURANCE REQUIREMENTS**

The Provider shall:

- a) Prior to commencement of services, furnish the COH with properly executed certificates of insurance which shall clearly evidence all insurance required in this section, and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior notice to the COH at: COH P.O. Box 1898 or 200 Forrest St, Hattiesburg, MS. 39403-1898
- b) Provide certified copies of endorsements and policies, if requested by COH, in lieu of or in addition to certificates of insurance.
- c) Replace certificates, policies, and endorsements for any such insurance that expires prior to the completion of services under this Agreement.
- d) Maintain such insurance with insurers authorized to do business in Mississippi and having A.M. Best Company ratings of not less than A: VII. Any alternatives to this requirement shall require written approval of COH.
- e) A contract must not be executed without a properly executed certificate of insurance evidencing all required coverage, including evidence of required additional insured.

#### **BID REQUIREMENT**

A certificate of insurance must be submitted with each bid. This certificate may be a sample. However, a contract will not be executed without a properly executed certificate of insurance evidencing all required coverages, including evidence of required additional insurance.

#### **5.0 DETERMINATION OF SUCCESSFUL BIDDER(S)**

On or before July 26, 2019 the COH expects to select Provider(s) to provide the specified services. In awarding contract(s) for this service, the COH will determine in its sole judgment the proposal(s) which is/are the most advantageous to the COH, considering the price, performance, and all other factors listed in the RFP.

The proposal will be rated on the following criteria:

- Applicant's ability to best meet the criteria set forth in this RFP
- Cost-effectiveness



- Agency's experience in providing services

The Applicant(s) whose combination of these criteria is/are deemed to be in the best interest of the COH will be selected as the successful Applicant(s). The COH reserves the unqualified right to reject any or all bids.

## **6.0 CONDITIONS**

### **6.1 BINDING CONTRACT/MODIFICATION OR WITHDRAWAL OF PROPOSALS**

A proposal in response to the RFP shall remain available for acceptance for a period of ninety (90) days from the bid opening date.

### **6.2 INDEPENDENT PRICE DETERMINATION**

By submission of a proposal, the Applicant certifies the following:

- a. Prices in the proposal were developed independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other Providers or with any competitor;
- b. Unless otherwise required by law, prices were not knowingly disclosed by the Applicant to others and will not knowingly be disclosed by the Applicant prior to bid opening; and
- c. No attempt has been made or will be made by the Applicant to induce any other person or firm to submit a proposal for the purpose of restricting competition.

### **6.3 DISCLAIMER**

All statistical and fiscal information contained in this RFP and its appendices, including amendments and modifications thereto, reflect the best and most accurate information available to the COH at the time of RFP preparation but are not to be construed as a guarantee of future activities.

### **6.4 TERMINATION**

The contract will be subject to termination under any of the following conditions:

- a. Upon Notice: The COH or the selected Provider may terminate the contract at any time with a thirty (30) day prior written notice to the other party.



b. By the COH For Cause Without Notice: If the selected Provider fails to perform its obligation in a timely manner in accordance with the requirements of the contract.

c. Failure of COH To Pay Without Notice: The contract may be terminated by the selected Provider(s) upon failure of the COH to make appropriate payments for services duly provided and accepted by the COH, if payment is more than thirty (30) days overdue.

## **6.5 REQUESTING ADDITIONAL INFORMATION**

The COH reserves the right to request additional data, information, oral discussion, or presentation to support any written proposal or to clarify any aspect of any proposal.





**Understanding of RFP Procedures, Terms and Conditions\***

***\*(To be returned with proposal submission)***

**Invitation to Submit Proposals  
City of Hattiesburg, Mississippi**

I acknowledge I have read and understand all procedures and requirements of the above referenced RFP and have complied fully with the general terms and conditions outlined in the RFP.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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

---



## **Attachment A**

### **MISSISSIPPI DEPARTMENT OF TRANSPORTATION HOUSEHOLD GOODS and PASSENGER CARRIERS CERTIFICATE OF CONVENIENCE and NECESSITY**

#### **Intrastate Guidelines**

The following are the guidelines for applying for a Certificate of Convenience and Necessity.

In order to apply for a Certificate of Convenience and Necessity, a letter of application must be sent to the Mississippi Department of Transportation containing the following information:

1. The name and address of the applicant, and if the applicant is a corporation, the names and addresses of its principal officers.
2. The public highway or highways over which, and cities, towns or villages between which and the route or routes or the territory within which it proposes to operate; in case of irregular route operation, the cities, towns or villages to be served and the territory to be served.
3. The kind of transportation, whether passenger or property, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic, and the weight of the vehicle or vehicle to be used.
4. A complete description of the property proposed to be devoted to the public service.
5. Detailed statement showing the assets and liabilities of such applicant; if the applicant is a corporation, such statement shall be sworn to by an executive officer of the applicant.
6. Proof satisfactory to the commission that the applicant will be able immediately upon obtaining a certificate to comply with the laws respecting public liability property damage and cargo insurance or bond.
7. A statement of the existing carriers serving the route or territory proposed to be served and who will be affected by the proposed service.
8. Any other additional information which the commission by order may require.



**Carriers desiring to transport household goods and passengers in the State of Mississippi must complete the application packet and submit it to the Mississippi Department of Transportation (MDOT).**

In order to process your application, you **must** complete the entire packet:

**1. Application Form (USDOT/MC #'s)**

- a. Complete all sections entirely
- b. Be sure to include official signature and date
- c. Exhibit A-1- **Clearly label i.e., "Exhibit A"**

**2. Filing Fee**

- a. Fifty dollar (\$50.00) filing fee must accompany the application packet
- b. Fee can be paid by credit card, cashiers' check, or money order
- c. Checks and money orders should be payable to the Mississippi Department of Transportation (MDOT)

The insurance requirements listed below must be met before carrier operations begin.

Minimum insurance coverage required is the same as the requirements contained in 49 C.F.R. Part 387. These limits are as follows:

**1. LIABILITY COVERAGE:**

(a) Property (non- hazardous)	\$750,000
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**2. CARGO INSURANCE:**

(a) Cargo liability for loads of three tons or less	\$5,000
(b) Cargo liability for loads of more than three tons	\$10,000

**3. PASSENGER CARRIERS:**

(a) Seating capacity of 16 or more	\$5,000,000
(b) Seating capacity of 15 or less	\$1,500,000

**4. BOC-3 Form:** For applicants not domiciled in the State of Mississippi.

**5. TARRIFF/CONTRACT:** Tariff of rates, schedules of rates, Power of Attorney, or a Rate Association if filing for a Certificate as an Intrastate Common Carrier and Contracts if filing for a permit as an Intrastate Contract Carrier.

If you have any questions, contact the Mississippi Department of Transportation at: (601) 359-1717 (Option 2) or Toll Free @ 888 737-0061 (Option 2).



## HEARING AND DISPOSITION ON APPLICATION FOR CERTIFICATE

Upon the filing of an application for a certificate of public convenience and necessity, the commission shall within a reasonable time, fix a time and place for hearing such application, **not less than twenty(20) days** after such filing and shall hear and determine such application within a reasonable length of time.

In determining whether the certificate shall be granted, the commission shall, among other things, give due consideration to the present transportation facilities over the proposed route of the applicant, the volume of traffic over such route, the financial condition of the applicant, and condition of the highway over the proposed route, or routes.

If the commission shall find the proposed operation justified, and that the applicant is fit, willing, and able to properly perform the services proposed and to conform to the provisions of the chapter and of the requirements, rules and regulations of the commission, it shall issue a certificate to the applicant, subject to such terms, limitations and restrictions as the commission may deem proper, authorizing in whole or in part the operations covered by the application. If the commission shall find the proposed operation not justified, the application shall be denied.



# **FTA CONTRACTUAL CLAUSES**

## **FTA CIRCULAR 4220.1F**



## ATTACHMENT 1

### FTA CIRCULAR 4220.1F

#### PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

##### B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.	Foreign air transp./travel.



**PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES**

**B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)**

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.



## No Government Obligation to Third Parties

### Applicability to Contracts

Applicable to all contracts.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

### Model Clause/Language

While no specific language is required, FTA has developed the following language.

#### **No Obligation by the Federal Government.**

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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





## 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.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

### Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

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

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



## Access to Records and Reports

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

### Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

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

### Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.



*Requirements for Access to Records and Reports by Types of Contract*

Contract Characteristics	Contract	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<b>I. State Grantees</b>	<b>a. Contracts below SAT (\$100,000)</b>	None	Those imposed on state pass thru to Contractor	None	None	None	None
	<b>b. Contracts above \$100,000/Capital Projects</b>	None unless <sup>1</sup> non-competitive award	Those imposed on state pass thru to Contractor	Yes, if non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<b>II. Non State Grantees</b>	<b>a. Contracts below SAT (\$100,000)</b>	Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
	<b>b. Contracts above \$100,000/Capital Projects</b>	Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes

**Sources of Authority**

1. 49 USC 5325 (a)
2. 49 CFR 633.17
3. 18 CFR 18.36 (i)

I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



## Federal Changes

49 CFR Part 18

### Applicability to Contracts

The Federal Changes requirement applies to all contracts.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

### Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

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

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



## 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.

### Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

### Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

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

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- c. **Opportunity to Cure (General Provision)** The (Recipient) 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 (Recipient)'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 (Recipient) setting forth the nature of said breach or default, (Recipient) 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 (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d. **Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. **Termination for Convenience (Professional or Transit Service Contracts)** The (Recipient), 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.
- f. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) 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.

- g. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) 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 the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) 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 (Recipient).

- h. **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 (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

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

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

- i. **Termination for Convenience or Default (Architect and Engineering)** The (Recipient) 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. The (Recipient) 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 contract 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.

- j. **Termination for Convenience or Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a



fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

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

If, after serving a notice of termination for default, the (Recipient) 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 (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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





## 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.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

### Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

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

1. *Nondiscrimination* - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. *Equal Employment Opportunity* - The following equal employment opportunity requirements apply to the underlying contract:
  - a. *Race, Color, Creed, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - b. *Age* - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - c. *Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.





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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



# Disadvantaged Business Enterprise(DBE)

49 CFR Part 26

## Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

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.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

## Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

### Disadvantaged Business Enterprises

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

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

**[If no separate contract goal has been established, use the following]** The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **City of Hattiesburg**. In addition, **the contractor may not hold retainage from its subcontractors. [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days**



~~after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.~~

- e. The contractor must promptly notify **City of Hattiesburg**, 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 **City of Hattiesburg**.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



# Incorporation of Federal Transit Administration (FTA) Terms

FTA Circular 4220.1E

## Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

## Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

## Flow Down

The incorporation of FTA terms has unlimited flow down.

## Model Clause/Language

FTA has developed the following incorporation of terms language:

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 City of Hattiesburg requests which would cause City of Hattiesburg to be in violation of the FTA terms and conditions.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



# Government-Wide Debarment and Suspension (Nonprocurement)

49 CFR Part 29  
Executive Order 12549

## Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

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). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

## Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

### Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by **City of Hattiesburg**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **City of Hattiesburg**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_  
Representative's Signature: \_\_\_\_\_  
Representative's Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_



## 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.

### Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

### Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

**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 (Recipient)'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 by the decision.

**Performance During Dispute** - Unless otherwise directed by (Recipient), 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 therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (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 there under, except as may be specifically agreed in writing.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



## 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.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

### Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.  
Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.* ]
- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)
- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.  
Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.
- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

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.

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

##### Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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



contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

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

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

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

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

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

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

\_\_\_\_\_ Date

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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





## 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.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

### Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

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.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



## 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.

### Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

### Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

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.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



## 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.

### Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

### Model Clauses/Language

No specific language is required. FTA has proposed the following language.

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.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



# Contract Work Hours and Safety Standards Act

## Background and Application

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than \$100,000." 40 USC 3701(b)(3)(A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work." These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act's requirements are satisfied.

## Clause Language

### *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.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



## Drug and Alcohol 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.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down Requirements

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.

### Model Clause/Language

#### *Introduction*

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

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

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

#### *Explanation of Model Contract Clauses*

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

### Drug and Alcohol Testing

#### Option 1

The contractor agrees to:

(a) participate in ( grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.



## Drug and Alcohol Testing Option 2

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

## Drug and Alcohol Testing Option 3

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before ( insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



# 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.)

## Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

## Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

## Model Clause/Language

Since no mandatory language is specified, FTA had developed the following language.

### Transit Employee Protective Provisions.

1. The Contractor agrees to comply with applicable transit employee protective requirements as follows:
  - a. *General Transit Employee Protective Requirements* - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
  - b. *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.*  
  
§ 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 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
  - c. *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.*  
  
§ 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
2. The 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.



## Charter Bus Requirements

49 U.S.C. 5323(d)  
49 CFR Part 604

### Applicability to Contracts

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down Requirements

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

### Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

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.

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## School Bus Requirements

49 U.S.C. 5323(F)  
49 CFR Part 605

### Applicability to Contracts

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

### Flow Down Requirements

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

### Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

School Bus Operations - Pursuant to 49 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.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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





## 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.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

### Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

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

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



## 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.

### Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

### Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

### Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

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:

1. 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.
2. 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.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



# 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.

## Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

## Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

**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 (Recipient)'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 by the decision.

**Performance During Dispute** - Unless otherwise directed by (Recipient), 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 the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (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.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



# 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.)

## Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

## Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

## Model Clause/Language

Since no mandatory language is specified, FTA had developed the following language.

### **Transit Employee Protective Provisions.**

1. The Contractor agrees to comply with applicable transit employee protective requirements as follows:
  - a. *General Transit Employee Protective Requirements* - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
  - b. *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.*  
  
§ 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 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
  - c. *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.*  
  
§ 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
2. The 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.



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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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



## AMERICANS WITH DISABILITIES ACT (ADA)

ADA Access - The FTA Best Practices Procurement Manual does not yet include a description of this required clause. In general, contractors must comply applicable requirements of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, and USDOT/FTA implementing regulations.

Americans with Disabilities Act (ADA). The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

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I acknowledge I have read and understand all procedures and requirements of the above referenced FTA Contractual Clause and have complied fully with the general terms and conditions stated above.

Contractor: \_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Representative's Printed Name: \_\_\_\_\_

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