REQUEST FOR PROPOSAL (RFP)

Lewiston-Auburn Transit Committee

OPERATION AND MAINTENANCE OF TRANSIT SERVICES

citylink PUBLIC TRANSIT SYSTEM

Lewiston-Auburn, Maine

125 Manley Road, Auburn, Maine 04210

Proposal Due Date: April 29, 2021
LEGAL NOTICE  
March 3, 2021

REQUEST FOR PROPOSALS  
Operation and Maintenance of Transit Services  
RFP Transit #2021-01

The Lewiston-Auburn Transit Committee (LATC) is seeking proposals for Operation and Maintenance of Transit Services for Fixed Route and ADA Complementary Paratransit Services. The Scope of Work is outlined in the Request for Proposals (RFP). The successful Proposer shall meet the terms and conditions set forth in the request for proposal and all other applicable exhibits, appendices, and attachments.

A copy of this RFP is posted on the Lewiston-Auburn Transit Committee’s website at https://www.purplebus.org

Please, direct all questions regarding this RFP by April 2, 2021 in writing to:

Marsha Bennett, Transit Coordinator  
Androscoggin Valley Council or Governments  
125 Manley Road  
Auburn, ME 04210  
Email: mbennett@avcog.org

All proposals must be received on or before 3:00 p.m. (EST) on April 21, 2021. Sealed proposals described herein will be received at the Androscoggin Valley Council of Governments, 125 Manley Road, Auburn, ME 04210.

The Lewiston-Auburn Transit Committee reserves the right to accept, renegotiate or reject any or all proposals and to waive any variance from the requirements of the instructions for proposers. LATC further reserves the right to award the contract to the proposer, which, in the opinion of LATC, will best serve the public interest, and the criteria listed herein.

Any contract resulting from the proposal is subject to and contingent upon a financial assistance contract between Lewiston-Auburn Transit Committee and the United States Department of Transportation, Federal Transit Administration, the Maine Department of Transportation, the City of Lewiston and the City of Auburn. Proposer will be required to comply with all applicable State and Federally required clauses.
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I. PROJECT INFORMATION

A. INTRODUCTION AND PURPOSE
Proposals are hereby requested by the Lewiston-Auburn Transit Committee, Maine (“LATC” or “citylink”) for qualified individuals or firms to provide transit operation and maintenance services (hereinafter “Proposer” or “Contractor”) for the public transit system in Lewiston and Auburn, Maine, for a two-year term with the potential for two one-year optional extensions, beginning October 1, 2021 and ending on September 30, 2023. The additional agreement period shall be determined by the sole discretion of LATC, and the individual or firm shall negotiate the terms of compensation for the operating and maintenance services associated with this RFP. The resulting contract is contingent on the performance of the proposer, continued availability of FTA Section 5307 funding, Maine Department of Transportation operating assistance, City of Auburn and City of Lewiston operating assistance funding, and service demand. On September 30, 2021, LATC’s contract with its current transit operator will expire. To ensure continued service, LATC requests that firms experienced in transit operation and maintenance services respond to this solicitation with a proposal that is fully operational on October 1, 2021 for both fixed route and ADA Complementary Paratransit services.

B. CONTRACT TERMS
The funding to operate citylink is provided under financial assistance contracts between the Lewiston-Auburn Transit Committee, and the Maine Department of Transportation, and the U.S. Department of Transportation, Federal Transit Administration, and must operate within the confines of this funding. The contract for providing such services shall be in accordance with the terms and conditions set forth in this RFP document, as required by the funding agencies. The Androscoggin Valley Council of Governments (AVCOG), as direct recipient of Federal Transit Administration funds and as the fiscal agent for all state and federal public transit funding for the Lewiston-Auburn, Maine urbanized area, shall have direct oversight over operations of the selected Proposer.

C. PAYMENT
Payment for services rendered and expenses incurred shall be made after presentation of Contractor’s proper invoices. Contractor agrees to supply any additional information requested by LATC in relation to invoices. LATC, at any time, may conduct an audit of records related to this project. Any overpayment uncovered in such an audit may be charged against the contractor’s future invoices. LATC may withhold payment for services it believes were improper, failed to meet with project specifications, or are otherwise questionable. No advance payment shall be made for the work furnished by contractor related to this contract.

Invoices should be submitted to:

LATC
125 Manley Road
Auburn, ME 04210

D. BACKGROUND
Lewiston-Auburn Transit Committee (LATC) is quasi-municipal agency providing a public bus system serving the Lewiston-Auburn area and is operated through a contract between the LATC and a private contractor providing bus operation and maintenance for fixed route and ADA Complementary Paratransit services.
LATC is directly owned, managed, and funded by the Cities of Lewiston and Auburn. Direct oversight of the system is provided by LATC. Operating subsidies for LATC are provided through the cities, state funds, Federal Transit Administration (FTA) 5307 Urban Programs funds, and fares. LATC operates the fixed route system and Americans with Disabilities Act (ADA) complementary paratransit services through contracts with private contractors. LATC’s bus system, citylink, operates Monday through Friday providing service on ten (10) routes using seven (7) buses and limited service on Saturday providing service on seven (7) routes using four (4) buses. citylink buses run on thirty (30) minute and sixty (60) minute headways. LATC’s citylink system operates from two hubs, one in Lewiston and one in Auburn. The Lewiston hub operates from the bus station located at 111 Bates Street on the corner of Bates Street and Oak Street and the Auburn hub is located at 24 Great Falls Plaza in downtown Auburn. LATC owns and maintains both bus stations. Both bus stations provide a protected waiting area for passengers, public restrooms and break room facilities for the drivers.

citylink fixed route ridership has experienced an annual decline from 2015 through 2019 but was trending up for FY 2020 prior to COVID-19 impacting the community. LATC reported to the National Transit Database (NTD) for Fiscal Year 2020 18,018 Vehicle Revenue Hours and 239,342 Vehicle Revenue Miles for the fixed route service.

Annual ADA complementary paratransit ridership for FY2020 experienced a decrease as well. Ridership has fluctuated over the past five years. Fiscal years 2016 and 2017 were abnormally high because the transit broker for MaineCare was using the ADA service. This practice was stopped in FY 2018 which saw ridership return to typical levels. LATC reported to the National Transit Database (NTD) for Fiscal Year 2020 1,692 Vehicle Revenue Hours and 17,772 Vehicle Revenue Miles for the ADA complementary paratransit service.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fixed Route Ridership</th>
<th>ADA Complementary Paratransit Ridership</th>
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<tbody>
<tr>
<td>2020</td>
<td>246,201</td>
<td>6,982</td>
</tr>
<tr>
<td>2019</td>
<td>307,779</td>
<td>9,674</td>
</tr>
<tr>
<td>2018</td>
<td>324,387</td>
<td>9,986</td>
</tr>
<tr>
<td>2017</td>
<td>359,528</td>
<td>14,270</td>
</tr>
<tr>
<td>2016</td>
<td>381,080</td>
<td>12,594</td>
</tr>
<tr>
<td>2015</td>
<td>424,652</td>
<td>8,149</td>
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The ADA complementary service operates system wide during the hours of operation of the fixed route. The ADA fare is $3.00. The provision of ADA Complementary Paratransit Service must comply with 49 CFR Parts 27, 37 and 38, FTA Circular 4710.1, and with LATC’s ADA Policies and Procedures.

LATC’s fleet currently consists of eleven (11) buses. These buses are used for fixed route operations only. Buses required to carry out ADA service shall be provided by CONTRACTOR. The term of this Agreement will be for two (2) years, with an option for two (2) additional years, thus, significant changes and modifications to the system may be made during the term of this Agreement.

LATC relies heavily on funding from the Federal Transit Administration. In FY2019, LATC’s fixed route and ADA services were financed 11% from fares, 55% from FTA Section 5307 Urban Programs funds, 5% from MDOT, 27% from the Cities of Lewiston and Auburn, and 2% other revenue.
LATC Transit is operated as a turn-key arrangement. The LATC’s fixed route bus fleet consists of seven (7) heavy-duty transit buses and four (4) cut-a-ways (Exhibit D). LATC is expected to take delivery of three (3) new heavy-duty buses in spring 2022 which will replace older, smaller cutaway buses. LATC requires seven (7) buses during the week and four (4) buses on Saturday to provide scheduled service. All LATC buses are equipped with Kenwood two-way radios, Main fare boxes, and Sportworks bicycle racks. LATC’s buses are equipped with Provision or REI camera systems with GPS capabilities. LATC will provide the contractor with a wireless portable lift system, 72,000lb capacity, purchased from Grey Manufacturing (2012) to assist with maintenance of the buses. LATC is responsible for providing bus stop signs and bus shelters, setting fares, planning and scheduling, and most other policy matters. The service contractor is responsible for providing one System Manager, one Maintenance Manager, data collection and clerical personnel, marketing/public information personnel, bus operators, dispatchers, and maintenance personnel. The contractor may be requested to provide additional equipment and resources necessary to operate the system.

LATC will assign the responsibility for warranty compliance to the selected contractor. Reimbursement for warranty work will, therefore, be the responsibility of the contractor.

The contractor is responsible for providing an Administration and Maintenance facility that is to be located within the city of Lewiston or Auburn. The maintenance facility will accommodate for the repair, washing, storage and the use of shop equipment needed to maintain LATC vehicles. LATC provides all transit vehicles required to operate the fixed route. The fleet consists of eleven (11) buses for revenue services. The contractor will be responsible for providing the necessary vehicles to meet the demand for the ADA complementary paratransit service, as well as non-revenue vehicles needed for administration, maintenance and supervising staff. A route map can be viewed on LATC’s website in the following location:

citylink Transit Route Map  http://www.avcog.org/884/Maps-Schedules

E. SUBMISSION OF PROPOSALS
Sealed proposals will be received until 3:00 p.m. (EST) on April 21, 2021, at the following office:

Androscoggin Valley Council of Governments
125 Manley Road
Auburn, Maine 04210

All proposals, either mailed or hand delivered, must be received at that address by the deadline stated above. The proposer must submit his/her technical proposal in a sealed envelope or box that is clearly marked with the words:

“Technical Proposal for Transit Operation and Maintenance Services, RFP Transit #2021-01”
Deadline: 3:00 p.m., April 21, 2021
- Please, include two (2) hard copies of the Technical Proposal with applicable literature and other supporting/required documents
- Please, include one (1) electronic copy of the Technical Proposal on a USB flash drive

Additionally, the price proposal shall be in a separate envelope marked:

“Price Proposal Transit Operation and Maintenance Services, RFP Transit #2021-01”
Deadline: 3:00 p.m., April 21, 2021

- Please, include two (2) hard copies of the Price Proposal
- Please, include one (1) electronic copy of the Price Proposal on a USB flash drive in Microsoft Word or Excel

Failure to adhere to the requested format may be cause for rejection of the proposal as non-responsive. The responsibility for submitting the proposal (including all documents requested herein), and all costs associated with the preparation and submission of the proposal is solely and strictly that of the proposer. LATC shall in no way be responsible for delays in the delivery of the mail or delays caused by some other occurrence. The proposer shall be responsible for any mathematical error in price proposals. Cost Proposals are not publicly read. At the time of the submission deadline, only the names of those who submitted a response shall be made public. No price information will be released.

F. INTERVIEWS AND PRESENTATIONS
Interviews of the highest scoring, qualified proposers may be conducted between May 5-7, 2021. LATC’s Evaluation Committee may amend evaluations based on information obtained during interviews from proposers.

G. VERBAL AGREEMENT OR CONVERSATION
No prior, current, or post-award verbal conversations or agreements with any officer, agent, or employee of LATC shall affect or modify any terms, modifications, or obligations of this RFP or any contract resulting from this procurement.

H. PROPOSAL POSTPONEMENT AND AMENDMENT
LATC reserves the right to postpone the deadline for submitting proposals and the opening of the proposals, and to revise or amend the specifications at any time up to the deadline for submitting proposals. Such changes, revisions and amendments, if any, shall be announced to each prospective proposer by written addenda to this solicitation. Proposers are requested to contact the Transit Coordinator if, upon review, material errors in the specifications are found. Errors must be pointed out before April 2, 2021 to allow for review and subsequent clarifications on the part of LATC. If an amendment requires significant changes in the Scope of Work to be performed under the contract, then the date for receipt of proposals may be postponed at LATC’s discretion.

I. REQUESTS FOR ADDITIONAL INFORMATION AND ADDENDUMS
After issuance of this RFP, Proposers or anyone acting directly or indirectly on behalf of a Proposer or potential Proposer or Subcontractor shall not discuss or submit inquiries about this RFP in any way with any of LATC members or AVCOG employees, other than the Transit Coordinator, Marsha Bennett, mbennett@avcog.org. Any communication with the Transit Coordinator must be in writing. One of the purposes for this RFP is to seek competition. Any proposer shall advise in writing if any specification, language, or other requirement inadvertently restricts or limits proposals to a single source. Requests for additional information or clarification of specifications must be received in writing by April 2, 2021. If needed, responses to clarifications will be released in an Addendum by April 9, 2021. The receipt of addendums will need to be acknowledged using Attachment K in the proposal documents. Any changes to the proposed requirements will be made by addenda which proposers are responsible for obtaining. All contact should be directed to:

Marsha Bennett, Transit Coordinator
Androscoggin Valley Council of Government
125 Manley Road
Any spoken communication given is not binding upon LATC until it is communicated in written form to all known potential proposers.

J. PRE-SITE VISIT
A pre-site visit can be schedule by appointment the between March 29-April 1, 2021. Due to current social distancing recommendations, LATC will not host a pre-bid meeting, but will instead offer individual site tours to allow proposers the opportunity to see the facilities. Masks will be required. Please, allow 24-hour notice of a site visit request. To schedule a pre-site visit, contact:

Marsha Bennett, Transit Coordinator
Androscoggin Valley Council of Government
125 Manley Road
Auburn, Maine 04210
Fax: (207) 783-5211
Email: mbennett@avcog.org

K. PREPARATION OF PROPOSAL(S)
All proposers are expected to examine the specifications and all instructions. Failure to do so will be at the proposer's risk. Each proposer must furnish the information required by the solicitation. Proposers must sign and submit all proposal forms, certifications, and affidavits. The person signing the proposal must initial erasures or other changes of entries made by the proposer. Proposals signed by an agent are to be accompanied by evidence of that person's authority unless such evidence has been previously furnished to the issuing office.

L. REQUIRED PROPOSAL CONTENTS AND FORMAT
The submitted proposal must include the required contents and follow the format outlined below. (Instructions for each exhibit are provided below.) There is no page limitation in document size, and graphic illustrations may be included in the document. However, any information submitted is expected to be relevant to this request for proposals and this project. Brochures and other promotional materials may not be substituted for filling out the requested forms or information. The forms supplied, or documents using the same format, shall be used to provide a uniform response to the information requested. Proposals that do not follow the listed format, or fail to include the required material, may be removed from consideration. Each of the following items must be included in each submitted proposal. Please make certain that all items are completed and labeled as instructed.

Cover Letter. On company letterhead, briefly introduce your firm (limit to one page). Include the company name and address, and the names, telephone numbers, and email addresses of the persons who shall be authorized to represent the proposer regarding all matters related to the proposal. A person authorized to bind the company to all commitments made in the proposal shall sign this letter.

LATC encourages Disadvantaged Business Enterprise (DBE) participation for this project. It is the policy of LATC to support and encourage participation of DBEs in the utilization of programs, activities, and contracting opportunities funded in whole or in part by the United States Department of Transportation in accordance with the regulations contained in 49 CFR Part 23, as amended. DBEs consist of small business concerns which are at least fifty-one percent (51%) owned and controlled by one or more socially and economically disadvantaged individuals. If applicable the proposer should
state in the cover letter that the firm qualifies for DBE status. (Each DBE company will be required to complete and submit to LATC a DBE certification form with the final contract document.)

**Summary of Experience.** Submit a list of all locations, which the proposer is now serving, or has in the past **three years** served, as transit operator and maintenance provider, including locations where Proposer is the turnkey transit provider. The list must include a brief description of the service provided for each location, the dates of this service, and the name, title, email and telephone number of the owner or a contact person responsible for each location. On the list, please indicate the locations that are like LATC in size and operation.

**Statement of Qualifications.** To be considered eligible and qualified, the proposer must have a minimum of five (5) years’ experience in the field of providing public transit services for systems like that contemplated herein. The proposer should demonstrate familiarity with the operation and maintenance of fixed route and demand response services, including all related tasks such as vehicle control and dispatch, training, safety, etc. The proposer must have the capability to provide qualified personnel to manage and operate the system.

**Questionnaire.** Each proposer must complete and submit the enclosed Questionnaire – LATC Transit Operations.

**Cost Proposal.** The cost proposal form, Attachment L, is to be completed for contract years one and two, as well as, for the two option years. This is an annual fixed price proposal.

**Attachments.** Each proposer must complete and execute the enclosed applicable forms marked Attachment A, B, C, D, E, F, G, H, I, J, K and L, and return these forms with the proposal.

**M. PROPOSAL MODIFICATION OR WITHDRAWAL**
Proposals may be modified or withdrawn up to the date/time deadline set for the submission of proposals, all proposal modifications must be submitted by the deadline, and must follow all the same procedures, as designated above for the submission of proposals.

After the deadline for the submission of proposals, proposals shall not be modified or withdrawn for a period of ninety (90) days. Unless an extension is agreed to by both parties, proposals shall be void ninety (90) calendar days after the submittal due date/time.

**N. SUBMISSION AND RESPONSE TO QUESTIONS**
All questions, comments, requests for information or clarifications regarding this RFP must be submitted in as indicated below no later than 3:00 p.m., on April 2, 2021. All questions, comments, requests for information or clarifications should, to the highest degree possible, cite the specific RFP section and paragraph number(s) to which the question refers, and include the identity of the sender, firm name, mailing address, telephone number, and an email address for a written response.

All responses to questions submitted to LATC shall be answered by April 9, 2021, by 4:00 p.m. in written format via email provided and posted to LATC’s website. LATC reserves the right to make modifications or amendments to the RFP, either at the request of a Proposer or upon LATC’s own initiative. If LATC determines it is appropriate to revise any portion of this RFP, then it will issue a written amendment to the RFP. Proposers shall submit a signed copy of the “Addendum Acknowledgement” for addendum issued with their proposal submittals (Attachment K). If an amendment requires significant changes in the Scope of Work to be performed under the contract, then the date for receipt of proposals may be postponed at LATC’s discretion.
O. QUALIFICATIONS FOR AWARD
Contract award shall be made only to a proposer found to be both responsive and responsible. Responsive proposals are those complying in all material aspects of the solicitation, both as to the method and timeliness of the submission and as to the substance of the proposal. Proposal submissions, which do not comply with all the terms of the solicitation, may be rejected as non-responsive.

Responsible proposers are those prospective contractors who, at a minimum, must:

- Have adequate financial resources, as required during performance of the Agreement, or the ability to obtain sufficient working capital.
- Have a satisfactory record of past performance in similar service.
- Have the necessary organization, facilities, personnel, capability and expertise to perform the tasks expected under this project.
- Certify that they are not on the U.S. Comptroller General's list of ineligible contractors.
- Are otherwise qualified and eligible to receive an award under applicable laws and regulations.

LATC shall determine whether the evidence submitted is satisfactory. LATC will make awards only when such evidence is deemed satisfactory and reserves the right to reject proposals where evidence submitted is determined to be fraudulent, or evaluation and investigation indicates inability of the proposer to perform. The award of a contract is based on best value and subject to approval of LATC. LATC reserves the right to accept or reject all proposals, and to negotiate with any qualified source, or to cancel in part or in its entirety this RFP. It may accept the proposal that it considers to be in the interest of LATC, with or without negotiation.

Contractors will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

P. INTERPRETATIONS OF RFP AND CONTRACT DOCUMENTS
No oral interpretations as to the meaning of the RFP will be made to any Proposer. Any explanation desired by a Proposer regarding the meaning or interpretation of the RFP, Scope of Work, Specifications, etc., must be requested in writing by April 2, 2021. Any interpretation or change made will be in the form of an addendum to the RFP, specifications, etc., as appropriate. All addendums will be posted to LATC’s website by April 9, 2021. All addenda will become part of the RFP and any subsequently awarded Contract. Oral explanations, statements, or instructions given by LATC before the award of the Contract will not be binding.

Q. PROPOSAL REJECTION
LATC reserves the right to reject all proposals, to waive all irregularities, and to accept that proposal which it seems to be in the best interest of LATC. Any such decision shall be considered final.

R. PROPOSER EVALUATION AND SELECTION PROCESS
The evaluation of proposals will be conducted by a selection panel (hereinafter Evaluation Committee). Proposals will be evaluated based on both the technical and price proposal. Responsible and responsive submittals shall be ranked based on criteria developed by LATC and listed below under “Evaluation Factors.” The Evaluation Committee and the Transit Coordinator reserve the right to reject any proposal which contains errors or any proposal which are not deemed to be responsive or in the best interests of the contracting parties. LATC’s Transit Coordinator will review each proposal for completeness and responsiveness to the request for proposals. The evaluation process
may consist of two phases: (1) an evaluation of all written proposals that LATC concludes to be responsible and responsive; and (2) if deemed necessary, a second phase of oral interviews with the top qualified proposer(s). Only one proposal is allowed per proposer. Proposals may not be modified after the submission deadline; however, proposers may withdraw proposals at any time prior to the date and hours set for proposal opening. LATC shall approve any agreement awarded because of this RFP.

Proposals will be evaluated based on the following criteria with the indicated weight.

1) Experience of Proposers (15%)
2) Technical Approach (25%)
3) Training and Safety (25%)
4) Transition Plan (5%)
5) Financial Stability (5%)
6) Price Proposal (25%)

**EVALUATION FACTORS**

1. **Experience of Proposers**
   Proposers shall indicate their qualifications, skills, experience, expertise, licenses, and financial resources available to support their provision of the Work. Proposers shall furnish a detailed description of work they have performed or are currently performing for other public transit agencies and transit clients and how they are pertinent to their proposals to provide Agreement Services. The Proposer shall furnish references for each of such clients. Descriptions shall include the key management personnel involved, technical accomplishments, and the degree of participation by Proposers. In responding, Proposers shall include specific supporting information in their proposals such as corporate skills and experience regarding similar or related projects with emphasis on experience in the U.S.; examples of successful coordination with federal, state and local regulatory agencies; experience providing fixed route and ADA paratransit transit services; corporate oversight plans; and corporate innovative plans, programs, and practices that resulted in documented and verifiable efficiency improvement, cost savings, and/or ridership increases. Proposers shall provide an introduction of all key management personnel including resumes with professional references.

2. **Technical Approach**
   Proposers shall describe business practices and innovative management techniques, methodologies, and concepts they propose to utilize in carrying out the functions prescribed in this RFP to maintain and improve the quality of the Work. Proposers shall include an organizational chart reflecting the names, reporting relationships, titles, and geographic location of key management personnel. A description of how key management functions will be distributed among key management personnel should be furnished. Proposers are required to describe the general approach, techniques, methodologies, and concepts they propose to utilize in carrying out the functions prescribed in this RFP for the Work. In presenting an overall approach to the Work identified herein, Proposer shall demonstrate their fixed route and ADA paratransit service operations, including scheduling and dispatching. Proposers shall describe how their approach to providing fixed route and ADA paratransit operations to LATC, shall, at a minimum, maintain and improve quality of service. Proposers should include technologies used for managing operating functions.
3. **Training and Safety**

Proposer shall submit with their proposals, current programs which Proposer has implemented for other currently contracted bus service operations, inclusive of the following: 1) Employee Safety Plan; 2) Hazardous Materials and Waste Management Plans; 3) Emergency Management and Evacuation Plans for the facilities the Proposer shall occupy; 4) Emergency Management and Evacuation Plans for the vehicles the Proposer shall operate; 5) Accident & Incident Investigation Procedures and Reporting Procedures; 6) Comprehensive Training Plan for all departments; 7) Personal Electronic Device procedures; 8) Operational Rule Book; 9) Driver’s Manual; 10) Drug and Alcohol Testing Policies and Procedures; 11) Internal Safety Audit Procedure (FTA MAP21 Compliant). Additionally, proposers’ plans shall be compliant with MAP 21 requirements, and provide a summarization that outlines their clear and comprehensive understanding of MAP 21, Title 49 CFR Parts 300-399 and 600-699, and OSHA requirements. Proposers shall provide details in their proposal on how they intend to comply with all Civil Rights Program requirements.

4. **Transition Plan**

Proposer shall submit a transition plan that ensures operations of services with full commencement on October 1, 2021. Said transition plan should address all start-up services including hiring, training, and any other necessary tasks. The proposer is responsible for all tasks and costs associated with the transition and any start-up activities.

5. **Financial Stability**

Proposer must have adequate financial resources or the ability to obtain such resources as required during performance of the agreement and must present to LATC with the latest financial statements, including Income Statement and Balance Sheet. (Information on the firm’s financial status will be withheld from public review if submitted under separate cover with a request for confidentiality and unless disclosure is ordered by a court of competent jurisdiction.

6. **Price Proposal (in separate, sealed envelope)**

Cost Proposal Form: A budget breakdown must be submitted using the “Transit Services Cost Proposal Form.” All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or written in ink adjacent thereto; and all corrections must be initialed in ink by the person signing the Cost Proposal Form. Unacceptable conditions, limitations, provisos, or failure to respond to specific instructions or information requested might result in rejection of the proposal. An hourly rate cost and total cost shall be presented for the two-year base period and two optional extension years.

Cost proposal will be evaluated after the completion of the technical review. LATC is looking for proposals that increase operational efficiency at a cost that is commensurate with the level of service proposed. LATC will consider the two-year option pricing when evaluating the overall cost proposal, and the total number of points awarded under this category will be based on the overall cost proposal, including the evaluated option pricing. All cost proposals shall be submitted on the forms provided. Any deviation will be grounds for disqualification. Cost Proposal Form can be found in Attachment L.

**S. AWARD PROCEDURE**

Upon LATC’s acceptance of a proposal, the successful proposer will be required to execute and return a contract furnished by LATC, along with a Performance Bond in the amount of twenty (20) percent of the annual agreement, and all certificates of insurance within fifteen (15) business days from the date of Notice to Award. Should the successful proposer fail to execute the agreement
within fifteen (15) business days, LATC has the right to offer the contract to the proposer of next best value to LATC.

The projected schedule for this procurement is:

<table>
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<tr>
<th>Event</th>
<th>Date</th>
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<tbody>
<tr>
<td>Release of RFP:</td>
<td>March 3, 2021</td>
</tr>
<tr>
<td>Pre-Site Visit:</td>
<td>March 29-April 1, 2021</td>
</tr>
<tr>
<td>Questions Due:</td>
<td>April 2, 2021</td>
</tr>
<tr>
<td>Release of Addendums:</td>
<td>April 9, 2021</td>
</tr>
<tr>
<td>Proposals Due by 3:00 p.m.:</td>
<td>April 21, 2021</td>
</tr>
<tr>
<td>Interviews (Discretion of LATC)</td>
<td>May 5-7, 2021</td>
</tr>
<tr>
<td>Effective Date of Contract:</td>
<td>October 1, 2021</td>
</tr>
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</table>

**T. COLLUSION**

The proposer guarantees that the proposal submitted is not a product of collusion with any other proposer, and no effort has been made to fix the proposal price of any proposer or to fix any overhead, profit, or cost element of any proposal price (see Attachment C Affidavit of Non-Collusion). Failure to submit the signed affidavit at the time of bid opening shall be grounds for disqualification of the proposer’s offer.

**U. COST OR PRICE ANALYSIS**

LATC reserves the right to conduct a cost or price analysis for any purchase, including the proposal price and any contract changes. Additionally, LATC may be required to perform a cost analysis when competition is lacking for any purchase. Sole source procurements which result in a single bid will be subject to a cost analysis which will include the verification of cost data, the evaluation of specific elements of costs and the projection of data to determine the effect of bid prices. Single bids are subject to negotiation to achieve a fair and reasonable price for LATC. Proposers must be prepared to submit data relevant to a cost or price analysis.

**V. TRANSIT FUNDING**

Any contract resulting from this RFP is subject to financial assistance from the United States Department of Transportation, the Maine Department of Transportation, and the cities of Lewiston and Auburn, and may be limited to the amount of funding received. If expected or actual funding is withdrawn, reduced, or limited in any way prior to the expiration date set forth in this contract or in any amendment hereto, LATC may, upon written notice to the contractor, terminate this contract in whole or in part. Such termination shall be in accordance with LATC’s rights to terminate for convenience or default.

**W. PUBLIC DISCLOSURE OF PROPOSALS**

LATC is subject to the Maine Freedom of Access Act (FOAA). Therefore, the contents of this RFP and the contractor’s proposal submitted in response to this RFP shall be considered public documents and are subject to the Maine FOAA statutes. However, various items may be exempt under public disclosure laws, such as proprietary, privileged or confidential information, and should be marked as such.

**X. OWNERSHIP OF DATA**

All data, documentation and innovations developed as a result of these contractual services shall become the property of LATC. Data provided by LATC either before or after award shall only be used for its intended purpose. Proposers shall not utilize or distribute LATC’s data in any form...
without prior written approval. All rights, title, and interest in and to the data collected and developed during the performance of this contract shall at all times remain the sole and exclusive property of LATC. Contractor shall surrender all such data to LATC prior to submitting an invoice for final payment.

Y. ASSIGNMENT AND/OR SUBCONTRACTING (CONTRACTOR)
A submitted proposal and, if accepted, the resultant contract may not be assigned without permission of LATC. A listing of all subcontractors, if any, and the portion of the services that they will provide must be submitted with the proposal. If subcontractors are listed, this does not relieve the successful proposer (Contractor) from any prime responsibility of complete and acceptable performance under any awarded contract. The contractor shall not enter into any subcontracts or agreements or start any work by the work forces of a subcontractor, with respect to this contract, without the prior written concurrence of LATC.

Z. ASSIGNMENT (LATC)
LATC reserves the right to assign its responsibilities under this contract to any existing or future governmental entity for the provision of public transportation services. Such assignment shall constitute a complete novation between LATC and Contractor; and receipt by Contractor from LATC of sums then due and payable for services rendered pursuant to this Agreement prior to assignment shall constitute a complete accord and satisfaction as between LATC and Contractor.
II. PROPOSER’S BID BOND

Know All Men by These Presents,
That we __________________________________________

AS PRINCIPAL, and __________________________________________________________

____________________________________________________________________________

______________________________________________________________

AS SURETY, and held and firmly bound unto the Lewiston-Auburn Transit Committee, hereinafter called the LATC in the penal sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00), submitted by said principal to LATC, for the work described below, for the payment of which sum in lawful money of the United States, Well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH

That whereas the Principal has submitted the above-mentioned Proposal to LATC for certain services for which said proposals are to be opened at AVCOG, Auburn, Maine on Wednesday, April 21, 2021, specifically described as follows:

The Operation and Maintenance of Transit Service – citylink/LATC

NOW THEREFORE, if the aforesaid Principal is awarded the contract and, within the time and manner required under the signature, enters into a written contract, in the prescribed form in accordance with the proposal, and files the bond with LATC to guarantee faithful performance, then this obligation shall be null and void; otherwise it shall remain in full force and virtue.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.
IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____________ day of A.D., 2021

__________________________________
Principal

__________________________________
__________________________________
Surety

Address ___________________________

__________________________________
__________________________________
__________________________________

NOTE: Signature of person(s) executing this instrument for surety must be properly acknowledged.
III. FEDERALLY REQUIRED DOCUMENTS

Attachment A: DISADVANTAGED BUSINESS ENTERPRISE

Disadvantaged Business Enterprise
NOTICE

AVCOG is a direct recipient of Federal Transit Administration funds. AVCOG has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. AVCOG administers a race-neutral DBE program. AVCOG encourages participation by DBEs and Small Business Enterprises in its contracts.

It is the policy of AVCOG to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also AVCOG’s policy:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

AVCOG shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements 49 CFR Part 26. AVCOG shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. AVCOG’s DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to AVCOG of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

(1) Withholding monthly progress payments;
(2) Assessing sanctions;
(3) Liquidated damages; and/or
(4) Disqualifying the contractor from future bidding as non-responsible.

The contractor must submit the AVCOG Contractor’s DBE Subcontractor Proposed Utilization form with their bid. This is a curable bid defect.
The AVCOG Contractor’s DBE Subcontractor Proposed Utilization form contains information that is required by USDOT.

The AVCOG Contractor’s DBE Subcontractor Proposed Utilization form must be used.

A copy of the AVCOG Contractor’s DBE Subcontractor Proposed Utilization form and instructions for completing it are attached.

The contractor shall submit the completed AVCOG Contractor’s DBE Subcontractor Letter of Intent form with their bid. This is a curable bid defect.

**Note:** For questions about DBE firms, contact the AVCOG Disadvantaged Business Enterprise Liaison Officer at (207) 783-9186 ext. 223.

AVCOG CONTRACTOR’S SBE/DBE SUBCONTRACTOR/SUPPLIER PROPOSED UTILIZATION FORM

Must name ALL Subcontractors and Suppliers

Contractor: ____________________________
Contact Person: ________________________ Telephone: ________________
E-mail: ________________________________
Bid Date: ________________ CONTRACT NAME: ______________________
FEDERAL PROJECT PIN # __________ PROJECT LOCATION: ________________

TOTAL ANTICIPATED DBE ___% PARTICIPATION FOR THIS CONTRACT

<table>
<thead>
<tr>
<th>SBE</th>
<th>DBE</th>
<th>Non-DBE</th>
<th>Subcontractor / Supplier Name</th>
<th>Item Number &amp; Description of Work</th>
<th>Quantity</th>
<th>Cost Per Unit / Item</th>
<th>Anticipated $ Value</th>
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Subcontractor Total >
a) DBE Total >

For a complete list of certified firms and company designation (DBE) go to http://www.maine.gov/mdot/civilrights/dbe/

NOTE: THIS INFORMATION IS USED TO TRACK AND REPORT ANTICIPATED DBE PARTICIPATION IN ALL FEDERALLY FUNDED AVCOG CONTRACTS.

For AVCOG Use Only:
INSTRUCTIONS FOR PREPARING THE
AVCOG CONTRACTOR’S SBE/DBE SUBCONTRACTOR/SUPPLIER PROPOSED
UTILIZATION FORM

The Contractor shall extend equal opportunity to MaineDOT-certified DBE firms (as listed in MaineDOT’s DBE Directory of Certified Businesses) and Small Business Enterprises (SBE) in the selection and utilization of Subcontractors and Suppliers.

SPECIFIC INSTRUCTIONS FOR COMPLETING THE FORM:

Identify the Contractor name, the name of the person preparing the form, and that person’s telephone number, and e-mail address.

Identify the Contract Name, Federal Project Identification Number, and location of the Project work

Calculate and provide percentage of your bid that will be allocated to SBE and/or DBE firms,

In the columns:

- Name each subcontractor and supplier, SBE, DBE and non-DBE firm to be used
- Give a brief description of work to be performed by the SBE/DBE subcontractor and supplier
- Provide the unit/item cost of the work/product to be provided by the subcontractor and supplier
- Specify the dollar value of the work for each subcontractor/supplier
- Total all subcontractor and supplier dollar values. Total the DBE dollar values – DO NOT include SBEs in this total

Revised 05/16
AVCOG DBE SUBCONTRACTOR LETTER OF INTENT

Contractor must submit this page for each DBE Subcontractor.

CONTRACT NAME: _________________________________________________________

Contractor: ______________________________________________________________
Address: __________________________________________________________________
City: ____________________________ State: _______ Zip: ______

DBE Subcontractor/Supplier: _________________________________________________
Address: __________________________________________________________________
City: ____________________________ State: _______ Zip: ______
Telephone: ___________________ Email: ______________________________________

Description of work to be performed by DBE Subcontractor/Supplier:
__________________________________________________________________________

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is $___________.

Affirmation

The above-named DBE Subcontractor/Supplier affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

__________________________________________  ____________________________
(Signature)  (Date)

__________________________________________  ____________________________
(Typed Name)  (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.
AVCOG CERTIFICATION OF FINAL DBE PAYMENT

Complete one form for each DBE Participant

CONTRACT NAME: _____________________________________________

TOTAL CONTRACT AMOUNT: $___________

In connection with the above-referenced contract we the undersigned, jointly certify and attest the following information to be true:

1. Contractor: _____________________________________________

2. DBE Firm: _____________________________________________

3. Describe work performed by DBE on this project: _____________________________________________

4. Total amount paid to DBE: $___________

5. Percent of Contract Paid to DBE: _________%

Attest:

PRIME CONTRACTOR                        DBE SUBCONTRACTOR/SUPPLIER

______________________________  ________________________________
(Company’s Name)                        (Company’s Name)

______________________________  ________________________________
(Signature)                            (Signature)

______________________________  ________________________________
(Title)                                (Title)

______________________________  ________________________________
(Date Signed)                          (Date Signed)

Contractor must submit to: AVCOG c/o Joan Walton, 125 Manley Road, Auburn, ME 04210, when final payment has been made or at contract end date, whichever is soonest.
AVCOG DBE UTILIZATION REPORT for CONTRACTORS, SUBCONTRACTORS and SUPPLIERS

CONTRACT NAME__________________________________________________________

NAME OF CONTRACTOR______________________________________________________
ADDRESS_________________________ CITY____________________ STATE____ ZIP_________

CONTACT PERSON_________________________ TELEPHONE________________________

TOTAL CONTRACT AMT $_________ TOTAL CONTRACT PAYMENTS $_________ CONTRACT % COMPLETE _______
TOTAL DBE CONTRACT AMT $_________ TOTAL DBE PAYMENTS YTD $_________ DBE % COMPLETE _______

REPORT for the PERIOD FROM:_________ TO:_________ FINAL REPORT: Yes ( ) No ( )

(Month) _______ (Month) _______ (Year) _______

List Disadvantaged Business Enterprise firms utilized in connection with the above Project, either as Subcontractors or Suppliers in the last period.

<table>
<thead>
<tr>
<th>NAME OF DBE FIRM / SUPPLIER</th>
<th>DBE SUBCONTRACT $ AMOUNT</th>
<th>DBE WORK PERFORMED / SUPPLIES PURCHASED</th>
<th>AMOUNT OF PAYMENTS THIS PERIOD</th>
<th>AMOUNT OF PAYMENTS TO DATE</th>
<th>REMAINING BALANCE</th>
</tr>
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Report Prepared by:__________________________________________________________

(Name & Title)

Approved by:_______________________________________________________________

THIS REPORT MUST BE SUBMITTED WITH EACH PAYMENT INVOICE EVEN IF NO ACTIVITY TOOK PLACE DURING THE PERIOD BEING REPORTED
Certification Regarding Debarment and Suspension

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Proposer is required to verify that none of the Proposer, 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 Proposer 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.

By signing and submitting its proposal, the Proposer certifies as follows:

To the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

The certification in this clause is a material representation of fact relied upon by the LATC. If it is later determined that the Proposer knowingly rendered an erroneous certification, in addition to remedies available to the LATC, the Federal government may pursue available remedies, including but not limited to suspension and/or debarment. The 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 Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.


Authorized Official: ____________________________________________

Signature: _____________________________________________________

Date: _____________________

Subscribed and sworn to before me this ___ day of _____________, 20__. 

Notary Public in and for the State of ________________ residing in _________________.

25
Attachment C: AFFIDAVIT OF NON-COLLUSION

Affidavit of Non-Collusion

I hereby swear (or affirm) under the penalty for perjury:
1. That I am the Proposer (if the Proposer is an individual), a partner in the proposal (if the Proposer is a partnership), or an officer or employee of the proposing corporation having authority to sign on its behalf (if the Proposer is a corporation);
2. That the attached proposal has been arrived at by the Proposer independently and have been submitted without collusion and without any agreement, understanding, or planned common course of action with any other vendor or materials, supplies, equipment, or service described in the Request for Proposals, designed to limit independent proposals or competition relative to the price to be proposed, and the proposal is made without reference to any other proposal.
3. That the contents of this proposal have not been communicated by the Proposer or its employees or agents to any person nor an employee or agent of the Proposer or its surety on any bond furnished with the proposal, and will not be communicated to any such person prior to the official opening of the proposal.

Dated this _____ day of ______________________, ______

________________________________________________________
(Name of Organization)

________________________________________________________
(Title of Person Signing)

________________________________________________________
(Signature)

ACKNOWLEDGEMENT

STATE OF _______________________________
COUNTY OF _____________________________

Before me, a Notary Public, personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to me this _____ day of ______________________, ______ by
________________________________________________________. (name of person).

________________________________________________________
(Notary Public Signature)
My Commission Expires: _________________________________
Certification Regarding Lobbying

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered. 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©(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
Certification Regarding Alcohol Misuse and Prohibited Drug Use

1) As required by FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” at 49 CFR part 655, subpart I, the undersigned certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, “‘Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” at 49 CFR part 655.”

2) The undersigned 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 Department of Transportation, Federal Transit Administration, Master Agreement (FTA MA (26)), as they may be amended or promulgated from time to time during the term of this contract. The undersigned’s failure to so comply shall constitute a material breach of contract.

Date _________________________________________

Company Name ________________________________________________

Name ________________________________________________________

Title _________________________________________________________

Signature _____________________________________________________
Attachment F: BUY AMERICA CERTIFICATION

**Buy America Certification**

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

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

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

**Certificate of Compliance with Buy America Requirements**

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

Date:_______________________________________________________

Signature: ______________________________

Company: ______________________________

Name: _____________________________________________

Title: ________________________________________________

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

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

Date: _____________________________________________

Signature:_____________________________________________________

Company: ____________________________________________________

Name:___________________________________________

Title: ________________________________________________
IV. SERVICE PROPOSAL

Attachment G: QUESTIONNAIRE

Questionnaire
LATC Transit Operations

Proposals which do not include this questionnaire in the completed format will be considered non-responsive and will be rejected.

This proposal is submitted by the firm:

1. State the number of years the Proposer has provided or managed a publicly provided and funded transit fixed route service using diesel-powered transit buses. List time spans and describe the service provided (including annual revenue vehicle mileage, number and size of vehicles, and amount of fare box revenue collected annually for each system referenced). Identify the responsible individual, providing his/her phone number, who can verify service. Attach additional descriptive material, if needed; however, please complete the following:

   Years of experience in transit operations:
   System/Service Name & Address:
   Date of Service:
   Annual Miles:
   Number & Size of Vehicles:
   Annual Fare Revenue:
   Contact Name:
   Phone Number:

2. State the number of years the Proposer has provided or managed an ADA complementary paratransit service and/or a door-to-door demand response service. List time spans and describe the service provided (including number of passenger trips and passenger miles). Identify the responsible individual, providing his/her phone number, who can verify service. Attach additional descriptive material, if needed; however, please complete the following:

   Years of experience in transit operations:
   System/Service Name & Address:
   Date of service:
   Annual Passenger Trips:
   Annual Passenger Miles:
   Contact Name:
   Phone Number:

3. Has your firm received an "unsatisfactory" rating from law enforcement or any other regulatory agency with regard to maintenance or records at any time during the past five (5) years?

   If yes, please give details.

4. Is there any recent, current or pending litigation involving your firm due to accidents which have resulted in death or injury from operation of a bus system? ("Recent" shall be defined as any judgment entered or settlement reached within the past five (5) years which resulted in a dismissal of a lawsuit.)
5. Please list the number of preventable collision accidents for systems operated by your firm during each of the past two (2) consecutive years.

6. In a sealed envelope enclose your firm's most recent Income Statement and Balance Sheet.

7. Are there any past, current or pending financial or legal issues which might jeopardize your firm's ability to provide services per the requirements of the attached agreement at the prices quoted by you for the two-year period?

If yes, please give details.

8. Describe other organizational resources and services which your firm will provide as part of this agreement at no additional charge.

9. Describe your firm's proposed PMI program for all buses and other vehicles, components, and equipment used in LATC Transit service, including, but not limited to engine, transmission, brakes, chassis, wheelchair lifts, air conditioning, fare boxes, batteries, destination signs, service vehicles, two-way radios, revenue storage units, data reporting system, spare units, etc. LATC will provide a portable lift and lift stands with a 72,000lb lift capacity. The lift can be inspected during the scheduled vehicle inspection.

10. Attach proposed documents to be used in PMI program. Description of PMI program should include both mileage and time intervals and should reflect PMI levels required by good practice and manufacturer warranties.

11. Attach the proposed driver vehicle condition reports which will be used by drivers for daily bus inspection, including specific emphasis on wheelchair lift inspection.

12. Describe what steps your firm will undertake to expeditiously repair/replace buses and equipment damaged or destroyed while in your possession.

13. Describe your firm’s ability to provide rolling stock to supplement LATC’s fleet should the need arise due to repairs, preventive maintenance, collision or other.

14. Please explain what experience your firm has with regard to the proper management of warranty repairs and warranty compliance issues.

15. Describe the extent of your firm's experience with heavy maintenance (i.e., complete rebuilding and refurbishing of engines, transmissions, and other components) of heavy-duty, diesel-powered transit buses. Please be specific regarding the type of buses, engine, transmission, etc.

16. Please describe your firm’s experience with providing complementary paratransit service in accordance with the American’s with Disabilities Act of 1990. Describe the level of involvement, including the certification process, dispatching, transporting, and knowledge of 49 CFR Parts 37 and 38, and FTA C 4710.1 Americans with Disabilities Act (ADA): Guidance. Describe how capacity constraint issues are resolved. Include a list of vehicles that will be used to provide the ADA service.

17. Please describe your firm's experience with cash control. Please describe what internal controls you propose to maintain security of the fare box revenue from the time the passenger deposits the fare into
the fare box until possession of the revenue for deposit into your bank account. Please describe how you propose to maintain security of the pass sales revenue from the time a customer purchases a pass or ticket from a vendor or from CONTRACTOR until possession of the revenue for deposit into your bank account.

18. Present a proposed organizational chart.

19. What is your firm's proposal with regard to use of the current CONTRACTOR’s employees?

20. Describe safety program, whether current or proposed. Describe in detail the training/evaluation/ongoing safety program being proposed for drivers, dispatchers, supervisors, and information service personnel. Include your description of the proposed areas covered, frequency, minimum number of hours per employee, etc. Attach any proposed personnel policy. Provide current company safety program policies.

21. Attach an example of your firm's proposed Management Information System forms which will be used to report the operational/financial data, including National Transit Database fixed route survey reporting, required in the "Scope of Work."

22. What is your firm’s experience with FTA drug and alcohol testing? Please attach a copy of your Drug and Alcohol Policy and your FTA-compliant drug testing program.

23. Disadvantaged Business Enterprises (DBE)
   A "Disadvantaged Business Enterprise" (DBE) is defined as a business at least 51% of which is owned, operated, and controlled by one or more individuals who are socially and economically disadvantaged. Individuals that are socially and economically disadvantaged are Women, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans and other groups identified by the Small Business Administration (SBA).

   Is the individual proposing firm a Minority Business Enterprise as defined above? Yes No
   Women's Business Enterprise? Yes No

24. LATC's oversight agency, the Androscoggin Valley Council of Governments (AVCOG), has a Disadvantaged Business Enterprise (DBE) goal of 0.1% for FY2019-2021.

   How will your firm reach out to DBEs to help meet this goal through contracts and subcontracts?

   Please submit a written intent of meeting these goals.

   Please submit the names, to the extent known, of proposed DBE subcontractors, a description of the work each is to perform, and the dollar value of each proposed DBE subcontract on the DBE Subcontractor/Supplier Proposed Utilization Form (page 20).

25. Describe your firm's approach to utilizing Customer Service Representative(s), especially relating to telephone information services for both fixed route and ADA Complementary Paratransit.

   What type of empathy, customer relations, telephone technique, and/or public speaking training has the Representative(s) received in the past? What type of empathy, customer relations, telephone technique, and/or public speaking training does your firm propose for this person(s) during the course of this contract?
How will your firm ensure that LATC’s telephone information lines are answered only by personnel properly trained in customer relations and with comprehensive knowledge of the transit system?

26. If LATC were to waive the Performance Bond, would there be a cost savings to LATC? If so, how much?

27. Specifically identify and describe the experience and qualifications of key personnel, including but not limited to: System Manager, Maintenance Manager, Drug and Alcohol Program Manager, ADA Program Manager, and Safety Officer (please attach a resume). Identify where these persons obtained the required experience described in the "Minimum Qualifications" of the RFP.

28. LATC uses the services of Alternate Transit Advertising, a New Hampshire based advertising sales agency, to sell advertising on citylink buses. Advertising is primarily sold on the exterior of the buses; however, interior bus advertising and bus shelter advertising are options. Explain how your firm will assist with installing, removing, maintaining, and performing other related functions related to interior sign frames, interior and exterior sign advertising, and bus wraps.

29. Indicate in brief why you consider your firm to be the best to perform this contract. Please indicate any new and/or creative ideas that would provide the LATC with a high quality, safe, efficient and responsive transit operation.
Attachment H: STATEMENT OF PRINCIPALS

**Statement of Principals**

Principals in your firm interested in the foregoing proposal are as follows:

(Stockholders and limited partners need not be listed unless they are officers or employees of the corporation or limited partnership. All general partners and corporate officers shall be listed. If a stockholder or partner is a firm, list the principals of that firm, as stated herein. If Proposer or other interested person is a corporation, it must furnish a certificate attesting to corporate existence and authority of officers to sign contracts and other documents. State the legal name of corporation, names of the president, secretary, treasurer, and manager thereof.)

<table>
<thead>
<tr>
<th>NAME</th>
<th>BUSINESS ADDRESS</th>
<th>INTEREST (Owner, Partner, etc.)</th>
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Attach additional sheets if necessary.

Signature of Authorized Official: ________________________________

Name: ________________________________

Title: ________________________________

Address: ________________________________

City, State, Zip: ________________________________
Performance Bond

Know All Men by These Presents,

That we ______________________________________________________________

AS PRINCIPAL, and _______________________________________________________

AS SURETY, are held and firmly bound unto LATC, a quasi-municipal organization, hereinafter called LATC in the penal sum of (20% of accepted proposal) ($________), submitted by said principal to LATC, for the work described below, for the payment of which sum in lawful money of the United States, Well and truly to be made, we bind ourselves, our heirs, executors, administrators and successor, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH

That whereas the Principal has submitted the above mentioned Proposal to LATC for certain services, and LATC has accepted and bound Principal to implement said Proposal, specifically described as follows:

The Management and Operation of LATC Transit Bus Service

In the event suite is brought upon this bond by the Obligee and judgment is recovered, the surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this ________day of , A.D. 2021.

_________________________________(SEAL)

_________________________________(SEAL)

_________________________________(SEAL)

Principal
(SEAL)
(SEAL)
(SEAL)
(Surety)
Address ____________________________
____________________________________
____________________________________
____________________________________

NOTE: Signatures of the person(s) executing this instrument for surety must be properly acknowledged.
# Proposal Affidavit

The undersigned hereby declares that he/she has carefully read and examined the Advertisement, the Scope of Work, the Specifications, Warranty, and Terms and Conditions with all supporting certificates and affidavits, for the provision of services specified at the prices stated in the fee proposal. The undersigned hereby certifies that the work offered in this Proposal meets or exceeds the requirements of the Scope of Work and are determined suitable for the intended purposes specified. Pricing is valid for a minimum period of ninety (90) calendar days after Proposal Opening.

**Offer (to be completed by Proposer)**

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<th>Signature</th>
<th>Official’s Title</th>
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<tr>
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**Notice of Award (to be completed by Agency)**

By executing this document, LATC accepts the Proposal Offer noted herein:

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Attachment K: ADDENDUM ACKNOWLEDGEMENT

Addendum Acknowledgement

If applicable, the undersigned acknowledges receipt of the following addenda to this RFP. (Include the number and date for each entry.)

Addendum Number _______ Dated ________________
Addendum Number _______ Dated ________________
Addendum Number _______ Dated ________________

Failure to acknowledge the receipt of all addenda may cause the proposal to be considered non-responsive to this Request for Proposal and may require rejection of the proposal.
Transit Services Cost Proposal
Summary of Unit Rates

Proposer: _____________________________________________

**FIXED ROUTE SERVICE:**
Base Vehicle Revenue Hours: 24,344
Base Vehicle Revenue Miles: 244,320

**ADA COMPLEMENTARY PARATRANSIT:**
Passenger Hours (FY2020 NTD): 1,692
Passenger Miles (FY2020 NTD): 25,562

<table>
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<tr>
<th>First Contract Year: 10/1/2021-9/30/2022</th>
<th>Fixed Annual Fee</th>
<th>Fee per Vehicle Revenue Hour</th>
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<td>Fixed Route Operating (Excluding Fuel)</td>
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<td><strong>Second Option Year:</strong> 10/1/2024-9/30/2025</td>
<td>Fixed Annual Fee</td>
<td>Fee per Vehicle Revenue Hour</td>
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<td>Fixed Route Operating (Excluding Fuel)</td>
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Fixed Route Maintenance are items allowed under FTA rules to be reimbursed using capital funds under FTA 5307 Urban Program funds.

Fixed Route Operating expenses are to exclude the cost for fuel. Arrangements will be made to have all *citylink* buses fueled at Lewiston Public Works (LPW), 103 Adams Street, Lewiston. LPW will bill the Contractor directly for the fuel, which will be passed on to LATC for payment.

The cost proposal for ADA is to be an annual cost total that includes the cost for fuel.
TRANSIT SERVICES COST PROPOSAL

Proposer ________________________________

The rates stated by CONTRACTOR in this Transit Services Cost Proposal shall be charged for existing services, expanded services, or reduced services within the context of the terms established in the attached Agreement.

This Cost Proposal and other attached proposal materials represent an offer to do work as described in LATC’s Request for Proposals. The Cost Proposal instructions have been followed. It is understood that this offer shall remain valid for sixty (60) days from the date of proposal opening unless withdrawn or renegotiated before the proposal submission deadline.

The undersigned, as proposer, declares that he/she has carefully examined the location of the proposed system, the other contract documents, and the requirements therein referred to; and he/she proposes and agrees that, if this proposal be accepted, he/she will contract with the Lewiston-Auburn Transit Committee (LATC) of Androscoggin County, a Quasi-Municipal organization under the laws of the State of Maine, to provide all necessary labor, and any necessary tools or equipment not provided by LATC, and do all the work specified in the contract in the manner and time therein set forth, required to implement, operate, manage, and maintain the system.

SIGNATURE OF PROPOSER:

________________________________________________
(Person Authorized to Bind Company)

________________________________________________
(Type Name & Title) Date

Company

_______________________________________________
Street Address

_______________________________________________
City, State & Zip
V. SCOPE OF WORK (Overview)

A. OVERVIEW
The scope of services outlined below shall be required of the transit operator firm selected to provide transit services to LATC. Firms submitting proposals must be able to demonstrate their capability to successfully operate transit services for LATC with effective and efficient management. LATC is interested in employing a firm that will optimize cost effectiveness, increase ridership, financial stability, staff development, and schedule and fleet maintenance. The Contractor shall provide oversight and management of the personnel, routes, maintenance, materials, training, and overall general superintendence necessary for safe, courteous, and reliable transportation of passengers.

The Contractor ensures the system will operate efficiently under standards and policies established by LATC, that the Contractor shall comply with all applicable federal and state laws, regulations, and requirements, and that special emphasis shall be required by the Contractor to ensure that it meets all of the requirements and regulations of, and report to when required, the Maine Department of Transportation, the US Department of Transportation, and the Federal Transit Administration.

B. CONTRACTOR RESPONSIBILITIES
The successful Contractor will be responsible for the services listed in this RFP. Exhibit A, Agreement for Operation and Maintenance of Transit Services, provides a more detailed description of the Scope of Work. The Contractor is expected to have thorough knowledge, expertise, skills and experience necessary to deliver the services requested in the RFP, all attachments, and exhibits. All rights and obligations of LATC, citylink, and the successful proposer are fully set forth and described in the Scope of Work in the Agreement (Exhibit A). The selected proposer shall be required to continue existing public transit routes, unless otherwise directed by LATC. The selected proposer will be expected to provide safe, reliable, and efficient service. The selected proposer is expected to provide a high level of customer service that is responsive to customer needs with safe and courteous employees. The selected proposer is expected to offer employment to current citylink drivers. Proposer shall describe in its proposal its hiring policies and procedures, including its approach and philosophy to minimize employee turnover and to maintain a stable work force.

C. MANAGEMENT PERSONNEL
The Contractor shall provide management of day-to-day operations for LATC’s fixed-route and ADA complementary paratransit services. Contractor shall oversee the operation of the services using a full-time, on-site transit manager. Contractor is expected to provide appropriate management coverage at all times. The Contractor shall locate its administrative and maintenance operations within the cities of Lewiston and/or Auburn.

D. TELEPHONE SERVICE
The Contractor shall provide and maintain a telephone system and equipment capable of meeting needs and reporting requirements for both fixed route and ADA paratransit. Such reporting for ADA requirements includes, but are not limited to, hold times and time to answer calls.

E. IT EQUIPMENT AND SUPPORT
The Contractor shall provide IT equipment and software suitable for dispatching and scheduling, passenger counts, automated stop announcing, and fare collection.

F. OPERATOR PERSONNEL
The Contractor shall be responsible for management of all drivers and supervisory personnel. The Contractor shall be responsible for driver assignments, field supervision, dispatching, and complaint
management to ensure all service is operated as scheduled. Management and/or supervisory personnel shall be available Monday through Saturday during designated hours of operation.

The Contractor shall be responsible for system-wide ADA compliance, the ADA eligibility certification process, and managing ADA complaints. The Contractor shall distribute ADA applications, render an initial determination of eligibility, and oversee the appeals process, as needed. LATC’s ADA Policy shall set sufficient guidelines to allow Contractor to administer the ADA eligibility certification process in accordance with such policy. The Contractor will be responsible for maintaining a current ADA certification list and preparation of certification identification cards and renewals.

The Contractor shall be responsible for the employment and supervision of all employees necessary to perform the service(s) described herein. Such responsibilities shall include employee recruitment, screening, selection, training (including customer service training), supervision, employee relations, drug testing, and recruitment of all employees. Contractor's personnel wages and work hours shall be in accordance with local government, County, State, and Federal regulations affecting such employment.

**G. TRAINING**

The Contractor shall develop, implement, and maintain a formal training and retraining program. All drivers, dispatchers, customer service representatives, and supervisors shall participate in the program. A copy of the training program, including periodic updates, shall be made available to LATC annually. A copy of the proposed Training Plan shall be provided and clearly marked as part of the submitted proposal.

The Contractor shall prepare and furnish to all drivers, dispatchers, telephone operators, and supervisors a Driver’s Manual. A copy of the Driver’s Manual shall be clearly marked and included with the submitted proposal. Contents of the Driver’s Manual shall address, at a minimum, driver’s rules; drug and alcohol testing requirements; accident/incident policies; radio policies and procedures; fare collection policies and procedures; vehicle inspection, care and maintenance policy and procedures, reporting procedures and pertinent sample forms. Updates or changes to the Driver’s Manual shall be made available to LATC when they occur or at least annually.

Dispatchers, telephone operators, supervisors, and any other personnel who may from time-to-time be assigned to telephone information or paratransit reservation lines shall be trained in customer relations skills, telephone manners, accident/incident procedures, transfer points, fares, paratransit reservation procedures, and operating policies as outlined in the Training Plan. Personnel assigned to paratransit trip scheduling and vehicle dispatching duties shall have a detailed knowledge of applicable procedures and professional, courteous techniques. Billing and payment personnel and on-site management shall be properly trained on how to process payments and bills.

LATC retains the right to require retraining of any Contractor staff at any time during the duration of the Contract.

**H. SAFETY**

LATC is committed to the safety of its employees, the Contractor’s employees, users of the transit system, and the public. LATC expects that provided service be safe, convenient and reliable. The Contractor is expected to create a culture of safety by requiring that employees and visitors under its control adhere to safe practices, procedures, and policies. The Contractor will coordinate with LATC
to maintain a safe environment in facilities within its sphere of management. Contractor responsibilities shall include, but are not limited to:

- Accident investigation
- Commitment to safe workplace environment and to maintenance practices that result in operating safe vehicles
- Implementation of continuing education on driver training courses, and other applicable training materials
- Maintaining a team approach to safety where safety is considered the responsibility of everyone
- Safety reporting

I. DATA REPORTING
The Contractor must be familiar with National Transit Database (NTD) Reporting Requirements and other such requirements, as may be required by LATC and as indicated in Exhibit B: LATC Reporting Requirements. The Contractor shall supply such data input to LATC in a timely and accurate manner, but no later than the 10th day of the month following the month for which the data is being reported. The contractor will be required to provide to LATC financial, safety and operational data, so that LATC may complete required federal and state reporting. This same type of information may be required on a monthly, quarterly and/or annual report basis, and the contractor must comply with the requested information in the format requested.

The Contractor shall include as part of their proposal examples of succinct report forms that provide requested information outlined in Exhibit B: LATC Reporting Requirements.

The Contractor shall maintain a daily office log containing vehicle breakdowns, road calls, missed trips (explaining the cause), and detailed records of all passenger complaints by category (General, Title VI, and ADA), comments and suggestions received. All logs and reports shall be electronically based and stored.

LATC shall have the right to assess and audit any and all records associated with the service(s) provided under this proposal. In addition, authorized regulatory agencies may be authorized to review the Contractor's service records in accordance with applicable law.

J. VEHICLES
LATC owns the revenue vehicles for citylink’s fixed route service and LATC will provide the vehicles to the Contractor. The Contractor will be responsible for providing vehicles necessary for the provision of the ADA complementary paratransit service. These vehicles must be in compliance with ADA 49 CFR Part 38. The Contractor will be solely responsible for physical damage to LATC vehicles proximately caused by the negligence of contractor or its employees or agents. The Contractor shall have the ability/resources to provide buses to meet schedule demands, if needed.

K. VEHICLE MAINTENANCE
The Contractor will be required to provide maintenance of vehicles. The Contractor shall be required to inspect each vehicle regarding safety, function and appearance of the vehicle prior to leaving the storage yard.

L. SPECIAL PROJECTS
The Contractor and LATC may mutually agree for the Contractor to provide special project assistance. Special projects shall include but are not limited to on-site bus construction inspecting,
services to monitor bus driver performance, comprehensive transit system operational analysis and planning, or any other special programs requested of the Contractor during the term of the agreement. For each Special Project, the Parties shall mutually agree upon the cost, the work task plan, special project budget, and the special project tracking/reporting plan.

M. FARES
LATC shall establish the fare structure for the services provided. Fares shall be subject to change as determined by LATC. LATC shall notify the Contractor of any fare changes at least thirty (30) days in advance of the change, except in the case of an emergency. The Contractor shall be responsible for assuring that each passenger deposits the exact fare in the farebox or provides a valid bus pass or transfer before boarding the bus.

The Contractor shall be responsible for fare reconciliation and accounting on a daily basis. The Contractor shall retain all fare revenue and keep an accounting on a daily basis of the fares collected for reporting purposes and for collecting data for specific analysis. The Contractor shall maintain sound internal controls over all tickets and monies collected through ticket sales and farebox collections. The Contractor shall deduct the monthly fares collected from the monthly invoice for fixed route and ADA services.

N. TICKETS, PASSES AND SCHEDULES
LATC will purchase all available types of fare media. The Contractor shall be responsible for managing LATC’s developed and approved system of sales and distribution of tickets, passes, brochures and other related system information at the Transfer facilities and other ticket sales outlets.

O. SECURITY CAMERAS AND MAINTENANCE
LATC revenue vehicles have on-board security cameras for the benefit of riders, transit personnel, vehicles, and equipment. The camera systems are passive. The Contractor shall be responsible for maintaining the camera systems and ensuring the proper daily functioning of the system, as well as downloading and managing the storage of the data. Contractor has access to the on-board video surveillance system and will have authorized system users. Contractor is expected to contact camera system manufacturer whenever problems arise regarding system functions. The Contractor is required to notify the Transit Coordinator of any system failures.

P. MARKETING
The Contractor shall assist LATC with coordinating marketing efforts, to include but not limited to: posting materials on buses, making a bus available and delivering to a stationary event, making brochures and materials available at the Transfer facilities, and training drivers/dispatchers to deliver branded messages when conversing with passengers and clients. LATC has final decision-making authority on all marketing plans and their implementation.

The Contractor shall coordinate with Alternate Transit Advertising (ATA), an outdoor media company that sells media space on citylink buses, on the installation and removal of advertising campaigns.

Q. UNIFORMS AND DRIVER IDENTIFICATION
The Contractor shall provide and ensure that transit drivers are attired in an appropriate uniform. The Contractor will ensure that all drivers present a neat and clean appearance. The Contractor shall be responsible for ensuring that drivers display appropriate identification on their uniforms.
R. MEDICAL ASSISTANCE TO PASSENGERS
In the event of a medical emergency on board a vehicle, the driver shall advise the dispatcher by radio and shall pull over to wait for emergency personnel to respond.

S. TRAFFIC VIOLATIONS
The Contractor shall be solely responsible for any parking and traffic violations of vehicles operating about the transit programs described herein.

T. ROUTING AND SCHEDULING
LATC reserves the exclusive right to alter routes and route schedules. The Contractor will assist LATC in establishing bus routes and bus schedules. The Contractor may present initial plan ideas, shall conduct service analysis and/or support the Transit Coordinator to complete service analysis, provide support in public outreach by posting public notices on buses and at the Transfer facilities when necessary, and attend public meetings. For ADA complementary paratransit service the Contractor will utilize a computer-assisted scheduling method capable of accommodating both advanced and same day reservations, as well as producing data reporting regarding ridership and mileage.

U. TRANSITION PERIOD FROM CURRENT BUS CONTRACTOR
Any identified changes shall look to minimize any negative effects to customers who use transit services in the region. A transition plan shall be developed and presented to LATC officials that ensures operations of services with full commencement on October 1, 2021. The proposer is responsible for all tasks and costs associated with the transition and any start-up activities. A transition plan should be included with the proposal and address all start-up services including hiring, training, and any other necessary tasks.

V. TRANSITION PERIOD TO FUTURE BUS CONTRACTOR
For up to ninety (90) days following the award of contract to a second contractor, CONTRACTOR shall provide to either LATC or any future CONTRACTOR selected by LATC, CONTRACTOR’S full cooperation in the transition to the successor CONTRACTOR. CONTRACTOR shall provide its best professional effort to assure a smooth transition from CONTRACTOR’S services to the new provider’s services and shall cooperate fully with the LATC and the new provider to this end.

W. ROUTE DETAILS
A route map is included in Exhibit C. The route map and route schedules can be found on LATC website, http://www.avcog.org/884/Maps-Schedules
VI. AGREEMENT FOR OPERATION AND MAINTENANCE OF TRANSIT SERVICES  
LEWISTON-AUBURN TRANSIT COMMITTEE

This Agreement made and entered into this ___day of, _______ 2021 by and between the LEWISTON-AUBURN TRANSIT COMMITTEE, a quasi-municipal agency, hereinafter referred to as "LATC," and  
hereinafter referred to as "CONTRACTOR" for management and operation of LATC’s public transit system’s (CITYLINK) fixed-route and ADA Complementary Paratransit.

WHEREAS, LATC and CONTRACTOR desire to contract for the performance by CONTRACTOR of the transit system work and services described in accordance with the terms of Request for Proposal for Operation and Maintenance of Transit Services RFP No. 2021-01 (“RFP”). The CONTRACTOR has responded to the Request for Proposals (“RFP”) and all subsequent attachments, as accepted by LATC to perform these needed services as indicated in the response attached hereto as Exhibit A and incorporated herein as though fully set forth. LATC desires to have the CONTRACTOR perform the work in accordance with the RFP and the response thereto prepared by the CONTRACTOR. The work to be performed in accordance with Exhibit A and is hereinafter referred to as “Transit Services.”

NOW, THEREFORE, in consideration of the premises and of the services to be performed by CONTRACTOR, and of the compensation to be paid therefore by LATC, it is HEREBY MUTUALLY AGREED as follows:

I. TERM OF AGREEMENT: The Agreement shall be for a period of two (2) years with the option to extend annually thereafter by written mutual consent, not to exceed two (2) additional one (1) year periods. Contract Year 1 will begin October 1, 2021 through September 30, 2022. Contract Year 2 will be October 1, 2022 through September 30, 2023.

Upon completion of the full term of this agreement, the parties may extend the term of this agreement, upon mutual written agreement, up to a maximum of two (2) years. The parties shall agree to such extensions at least thirty (30) days prior to the termination date of this Agreement, including any new economic terms.

II. SCOPE OF WORK:

A. CONTRACTOR Responsibilities: CONTRACTOR agrees that for the term of this Agreement it will be responsible for the following in the operation of citylink transit services:

1. Key Personnel/Management: During the term of this Agreement, CONTRACTOR shall provide sufficient executive and administrative personnel specializing in transportation services as shall be necessary and required to perform its duties and obligations under the terms hereof. The CONTRACTOR shall provide general and specific management of day-to-day operations for the citylink fixed route and ADA paratransit services. The CONTRACTOR shall oversee the operation of the services using a full-time, on-site transit manager. The CONTRACTOR shall provide appropriate management coverage at all times. There shall be no periods when managers are all assigned to non-citylink work (e.g., for corporate level meetings, responding to other non-citylink problems, etc.).

2. Day-to-Day Operation: CONTRACTOR management and/or supervisory personnel shall be available to provide adequate supervision of the day-to-day operation of transit services, including dispatching, field supervision, and complaint management Monday through Saturday during designated hours of operation.
3. **Americans with Disabilities Act (ADA) Compliance:** CONTRACTOR shall be responsible for administration of the Americans with Disabilities Act (ADA) Program and all required training as it relates to services provided under this Agreement. Such responsibilities shall include the eligibility certification and application process, including distribution of applications; receiving completed eligibility applications; reviewing completed applications; and rendering an initial determination of eligibility. CONTRACTOR shall not have waiting lists, deny trips, or limit the number of ADA trips. CONTRACTOR understands that the Transit Coordinator or other LATC representative may conduct random visits to observe the ADA scheduling and reservations process for compliance.

4. **Operating Facilities:** CONTRACTOR shall locate its administrative, maintenance and dispatching office within the cities of Lewiston or Auburn, Maine, unless otherwise approved by LATC. CONTRACTORS facilities shall be maintained by the CONTRACTOR and present a professional appearance at all times.

5. **Personnel:** CONTRACTOR shall employ and supervise all personnel, including drivers, dispatchers, managers, customer service representatives and other personnel needed to operate and maintain the service provided by CONTRACTOR under this Agreement. Qualified supervisory personnel shall be available during all hours of operation.

Employees shall at all times be and remain the sole employees of CONTRACTOR, and CONTRACTOR shall be solely responsible for payment of all employee’s wages and benefits. CONTRACTOR shall comply with all applicable State and Federal laws with respect to employer’s liability, workers' compensation, unemployment insurance and other forms of Social Security, and also with respect to withholding of income tax at its source from the wages of said employees.

CONTRACTOR shall indemnify and hold harmless LATC from and against any and all liability, damages, claims, costs and expenses of whatever nature arising from labor issues between the CONTRACTOR and any of its employees or job applicants.

CONTRACTOR shall be solely responsible for its own legal representation relating to any labor issues between the contractor and any of its employees or job applicants.

LATC shall not attempt to directly discipline or terminate any CONTRACTOR employee. LATC may advise CONTRACTOR of any employee’s inadequate performance which may have a negative impact on the services being provided, and CONTRACTOR shall take prompt action to remedy the situation. In extreme cases, LATC may demand the removal of a CONTRACTOR employee, and CONTRACTOR shall affect removal immediately.

6. **Customer Service:** CONTRACTOR’s staff shall provide information and be sufficiently familiar with citylink services to answer questions. Sufficient staff shall be trained in all types of fare media sales to ensure expedited customer service. A minimum of one person must be available in the office when buses are operating to provide information. If bus service is modified by LATC to begin earlier or to end later than currently scheduled, then the time period when customer service is available shall be expanded to correspond with current operating service hours.

7. **Pass Sales:** During the time periods that CONTRACTOR’s customer service counter is open, CONTRACTOR shall be required to sell transit passes, tickets and other fare media as directed by LATC. CONTRACTOR shall prepare and provide LATC with a report of
sales and deposits monthly by the 10th working day of each month. CONTRACTOR shall reimburse LATC for funds lost or for the value of fare media lost by CONTRACTOR. LATC, at its sole discretion, may conduct audits at any time. CONTRACTOR shall submit monthly report of all deposit records, sales logs, and summary of total sales of all fare media. All fare accounting and cash handling procedures proposed by CONTRACTOR shall be subject to LATC approval before implementation.

8. **Customer Complaints:** CONTRACTOR shall respond to and address customer complaints.

9. **Telephones:** The CONTRACTOR shall provide and maintain a telephone system capable of providing data for ADA reporting requirements, including but not limited to hold times, call volumes, and abandoned calls. CONTRACTOR shall provide dispatch and/or reservationist personnel necessary to effectively respond to incoming calls at a quality and level consistent with customer demand, and in strict accordance with the operating days and hours set forth in the current bus schedule or any revisions thereto. Scheduled and unscheduled absences should also be considered to ensure adequate staffing levels even when employees are on leave or call in sick.

10. **Uniforms:** The CONTRACTOR shall provide and ensure that transit drivers are attired in an appropriate uniform. The CONTRACTOR will ensure that all drivers present a neat and clean appearance. The CONTRACTOR shall be responsible for ensuring that drivers display appropriate identification on their uniforms.

11. **Training Program:** Appropriate, effective and ongoing training for CONTRACTOR employees and subcontractors is of critical importance. The CONTRACTOR must develop a detailed Training Program that complies with the requirements set forth herein. This plan must be approved by LATC prior to start-up and must be updated on an annual basis.

The CONTRACTOR, in accordance with LATC policies and procedures, best practices and Federal and State regulations and standards, shall develop and implement an ongoing comprehensive training and certification plan (Training Plan) for employees who are providing services with respect to this contract.

Training shall include those elements required for the performance of duties in addition to specific areas of training for fixed route operations and ADA paratransit, including assisting passengers using mobility devices and assisting passengers with limited mobility, and system safety and security training for new hires. Training courses shall include provisions for refresher training.

The Training Plan shall include a requirement that all training is provided by qualified individuals to provide such training and documented in a manner that is available for LATC inspection at any time (this includes in-service training). Training should encompass management, frontline and non-frontline employees, refresher training, new hire training, and system safety training. Customer Service training is to include dealing with difficult passengers, and ADA training. Information developed for training should include a description, category of personnel required to attend, frequency of training, and methods for addressing retraining.

The CONTRACTOR shall require that all employees who perform safety-related inspections and tests of equipment are trained, tested and certified in accordance with regulatory requirements and guidelines.
The CONTRACTOR shall also provide LATC with a quarterly training report.

The CONTRACTOR is responsible for formulating and coordinating all training activities.

a. **Driver Safety Program:** CONTRACTOR shall implement a continuing driver safety program that shall include defensive-driving course work, specialized assistance to elderly and disabled passengers and daily vehicle maintenance checks. Driver Safety Program shall be included as part of the Training Plan.

b. **Driver Sensitivity Training Program:** CONTRACTOR shall implement a continuing driver sensitivity training program focusing on the importance of passenger relations and to ensure drivers respond appropriately to all customers, especially elderly, disabled and non-English speaking passengers.

c. **ADA Training (Initial and Refresher):** The CONTRACTOR shall provide initial and annual refresher ADA training to all personnel providing service to the public. All service providers shall be included whether they perform such service on a regular, intermittent, or infrequent basis. At a minimum, such training shall include:

1) Overview of the ADA law.
2) A discussion of various disabilities that present transportation issues, scenarios regarding service to passengers with disabilities, and the practical remediation of access problems presented in those scenarios, and equipment and other resources available to make public transit a viable transportation alternative to passengers with disabilities. Included within this training shall be a discussion of:
   - Operator responsibilities.
   - Equipment and devices currently in use.
   - Proper use and securement of such equipment and devices.
   - Other matters as the CONTRACTOR deems appropriate. Field time on the bus with instructors to evaluate operator expertise in boarding, securement, and deboarding of mobility-aid devices and the operator's familiarity with other equipment and devices then in use. Several types of mobility-aid devices shall be used to conduct the hands-on training.
3) For use in hands-on training and hands-on evaluation, the CONTRACTOR shall provide a manual wheelchair.

Annual Refresher Training: ADA sensitivity training each year. This training shall include:

1) A review of ADA complaints filed by passengers with disabilities during the preceding year by category.
2) A review of passengers with disabilities requiring special service needs.
3) ADA operational training, including a discussion of scenarios regarding service to passengers with disabilities and the practical remediation of access problems presented in those scenarios, and equipment and other resources available to make public transit a viable transportation alternative for passengers with disabilities.
4) Updates on changes to ADA law and related mandates as appropriate.
5) Included within this training shall be a discussion of:
   - Operator responsibilities.
   - Boarding and securement equipment and devices currently in use.
6) A minimum of one (1) hands-on check to evaluate operator expertise in boarding, securement, and deboarding of mobility-aid devices and the operators' familiarity with other equipment and devices then in use. Several types of mobility-aid devices shall be used to conduct the hands-on training.

For use in hands-on training and hands-on evaluation, the CONTRACTOR shall provide a manual wheelchair.

Additional Training: In addition to the above-noted training requirements, Operators will be required to have additional training to include but not limited to: Personal Care Assistance and Companions; Transfers; Fare; Mobility Devices; Service Animals; Reasonable Modification; Prohibited Activities; and ADA Emergency Communication.

12. **Daily Logs:** Drivers shall maintain appropriate documentation to show number of passengers and mileage for fixed route and ADA paratransit. Dispatcher shall maintain appropriate documentation to show point of origin/destination, time of call for immediate service requests, time of pickup/drop off for each completed trip, no-shows and cancellations, subscription service requests, customer service forms and trip refusal log for ADA paratransit services. Trip/feebox reconciliation documentation shall be maintained for both fixed route and ADA paratransit. CONTRACTOR shall maintain records for the duration of the Agreement through completion of LATC’s next Federal Transit Administration’s Triennial Review. CONTRACTOR shall ensure that vehicle service hours shall be directly traceable by operator trip sheets that will be provided to LATC upon request.

13. **Compliance with Federal, State and Local Requirements:** CONTRACTOR shall comply with all applicable Federal, State and Local requirements. The CONTRACTOR will be required to comply with all terms and conditions prescribed for third party contracts in a grant contract between the United States Department of Transportation and the Lewiston-Auburn Transit Committee and to follow all applicable federal provisions down to Subcontractors at every tier.

Specific guidelines shall be those prescribed by "Federal Transit Administration Master Agreement" 49 C.F.R., Part 18, Federal Transit Administration (FTA) Circular 4220.1F, "Third-party Contracting Requirements" and OMB Circular A-1 02 "Uniform Requirements for Grants and Cooperative Agreements with State and Local Governments".

14. **Holidays:** No transit services shall be provided on the following holidays: New Year’s Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day or any other holiday authorized by LATC.

15. **Charter Service:** CONTRACTOR shall not operate charter service using LATC vehicles without prior written consent from LATC. If charter service is allowed, then it shall be provided in accordance with FTA regulations.

16. **Ticket Distribution:** CONTRACTOR shall distribute tickets to appropriate outlets and sell tickets, as agreed upon by LATC. CONTRACTOR shall collect, record, and return all tickets and money received as fares. Ticket data shall be provided monthly.

17. **Fare Collection:** CONTRACTOR shall perform fare reconciliation and accounting daily, and
all fare revenue shall be retained by the CONTRACTOR. Fare revenue shall include cash fares, tickets and pass sales, and any other revenue collected by CONTRACTOR. CONTRACTOR shall retain fare revenue and deduct from the monthly invoice. Appropriate reconciliation documentation of daily fare revenue collected shall be submitted with the monthly invoice and available to LATC for review upon request. CONTRACTOR shall collect data for specific analysis as may be requested by LATC.

CONTRACTOR may be held accountable for any variance or discrepancies between the farebox revenues reported and the bank deposited revenue. Deposits greater than amounts reported will be deemed correct. However, deposits less than amounts reported will be considered a shortage for which CONTRACTOR may be held accountable. Shortages shall be deducted from CONTRACTOR’s monthly invoice.

18. **Internal Financial Controls:** CONTRACTOR shall maintain sound internal controls over all tickets and monies collected through ticket sales and farebox collections in cooperation with and subject to periodic audits by LATC.

19. **Invoicing and Billing:** CONTRACTOR shall submit detailed monthly invoices and/or billings to LATC or service pursuant to the Agreement. CONTRACTOR shall invoice LATC monthly for all charges due to CONTRACTOR pursuant to this Agreement and no later than the 10th of the month after the service for the prior month has been provided. All monthly and hourly rates billed to the system will be included in LATC’s invoice. CONTRACTOR’s monthly invoices shall be submitted with a Monthly Report with sufficient operating detail to allow LATC to verify all charges.

20. **Marketing and Public Relations:** CONTRACTOR shall provide technical assistance, assist in marketing and promotional activities, distribute promotional materials in vehicles by drivers, and perform liaison services as requested by LATC. Advertising or posting of any written materials on the interior and exterior of Revenue Vehicles by CONTRACTOR is prohibited.

CONTRACTOR shall cooperate in LATC’s marketing and advertising (such as through the installation and removal of all interior rider alerts, newsletters, bus scheduling information, and bus on display at events as schedule allows) at no additional expense to LATC. CONTRACTOR may not use LATC or citylink’s name or logo without LATC’s prior written consent.

LATC will provide all printed bus media. CONTRACTOR shall be responsible for ensuring proper care, protection, handling, and maintenance of citylink bus media, and other printed schedule materials, and for ensuring that there is an adequate supply of media onboard each Revenue Vehicle and at the Transit Center locations. CONTRACTOR shall provide LATC with at least two (2) months advanced notice of dwindling supplies, based on typical usage, to allow LATC sufficient time to order replacement materials.

*Communications with the Media.* All communications with the media shall be the sole responsibility of LATC. CONTRACTOR and its employees shall not engage the media as a spokesperson for LATC. In addition, CONTRACTOR and its employees shall not speak on behalf of LATC in any online forum or social media site, at official public meeting, or to members of the press. CONTRACTOR shall limit its public engagement with customers to answering questions on board citylink Revenue Vehicles, at bus stops, at the Transit Centers, or
as part of the official customer comment system.

Endorsement Policy. CONTRACTOR may not use LATC or citylink’s name, logo, or images in vendor promotional materials, written or oral endorsements, customer profiles, online information, or sales collateral unless specifically authorized in writing by LATC. This provision does not prohibit CONTRACTOR from using LATC as a reference in responding to a request for proposals or other procurement solicitation, if CONTRACTOR coordinates all requests for references with the Transit Coordinator.

21. Insurance: CONTRACTOR, at its own expense, shall maintain required and appropriate insurance coverage at all times during the terms of this agreement, as detailed in the Insurance and Indemnification sections of the RFP, including documentation of coverage to LATC, and shall provide LATC with certificates certifying that CONTRACTOR has liability, comprehensive, and collision insurance for each vehicle as required by LATC. Such insurance shall name LATC, AVCOG, City of Auburn, City of Lewiston and Maine Department of Transportation as an additional insured. CONTRACTOR shall provide documentation prior to commencement of the work under this agreement and of any changes to insurance coverage including changes resulting from additions or removals of vehicles to LATC’s transit fleet.

Such insurance shall protect the CONTRACTOR from claims which may arise out of or result from the CONTRACTOR’s operations under this Agreement and for which the CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a subcontractor or by anyone employed directly or indirectly by any of them, or by anyone for whose acts any of them may be liable.

Approval of the insurance by LATC shall not relieve or decrease the liability of the CONTRACTOR hereunder. It is to be understood that LATC does not in any way represent that the insurance of the limits of insurance specified herein are sufficient or adequate to protect the CONTRACTOR’s interests or liabilities.

The CONTRACTOR shall carry insurance at a minimum coverage through the duration of the duration of the contract as follows:

i.) Statutory Workman’s Compensation whether self-employed or other form of business entity and/or disability protection plan for self-employed contractors.

ii.) Contractor's Public Liability and Property Damage:

   Bodily Injury
   Each person $500,000
   Each accident $500,000

   Property Damage
   Each accident $500,000

LATC reserves the right to request a copy of all policies and endorsements prescribed herein.

a. Commercial General Liability (CGL) Insurance in the amount of $1,000,000 combined single limit each occurrence for bodily injury and/or property. If a general aggregate limit shall apply to this coverage the aggregate limit shall apply separately.
b. **Business Automobile Liability (BAL) Insurance** in the amount of $1,000,000 combined single limit each accident for bodily injury and/or property damage. Said policy shall apply to all owned, leased, hired and non-owned vehicles used in connection with the work. CONTRACTOR shall also be responsible for maintaining Auto Physical Damage coverage on the vehicle on an actual cash basis for any damage caused to the vehicles that is attributable to negligence of the CONTRACTOR or that occurs while the vehicle is being operated.

c. **Workers’ Compensation Insurance** in compliance with statutory limits as required by the State of Maine.

Any deductibles or self-insured retentions must be declared to and approved by LATC. At the option of LATC, either: insurer shall reduce or eliminate such deductibles or self-insured retentions as respects LATC, its officers, officials, employees and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The Worker's Compensation insurance shall be endorsed to provide that it shall not be canceled or altered without first giving 30 days prior written notice to LATC by Certified Mail and that all rights of subrogation against LATC, its officers, officials, employees, agents or volunteers are waived.

d. **Fidelity Bond/Theft Insurance** in the amount of $10,000 per any one occurrence protecting LATC from employee theft. Such fidelity bond or insurance policy shall name LATC as loss payee with respect to amounts claimed thereunder arising out of CONTRACTOR’S performance under this Agreement. CONTRACTOR shall provide LATC with a copy of said bond or policy accompanied by proof of payment for same.

General Requirements: The CONTRACTOR shall not commence work herein until it has obtained the required insurance and has received written approval of such insurance by LATC. **CONTRACTOR shall furnish evidence of such insurance in the form of a certificate (Accord or similar form).**

The certificate shall provide the following:

- The policy shall be written on an occurrence basis. If any insurance specified above it written on an “Claims Made” (rather than an “occurrence” basis), then, in addition, to the coverage requirements stated herein, CONTRACTOR shall:
  - Ensure that the Retroactive Date is shown on the policy, and such date shall be before the date of the CONTRACTOR or any work beginning under the agreement.
  - Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
  - If insurance is cancelled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the agreement effective date, CONTRACTOR shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the work.

- Name LATC, AVCOG, City of Auburn, City of Lewiston and Maine Department of Transportation as an additional insured for CGL and BAL.

- Contain a waiver of subrogation in favor of LATC.
• Specify that the CGL and BAL insurance is non-contributory as respects any insurance or self-insurance programs maintained by LATC.
• Contain a specific reference to the subject contract.

In the event the insurance should be materially changed or cancelled, the CONTRACTOR shall provide LATC at least thirty (30) days’ notice prior to the effective date of the change or cancellation.

An insurance company having less than an A rating by the A.M. Best Company will not be considered acceptable. All certificates are subject to acceptance by LATC.

22. Equipment and Vehicle Maintenance and Management: LATC shall provide sufficient vehicles, radios, fuel and fareboxes required for the provision of fixed route services as in this Agreement and the associated RFP. The Contractor shall service LATC vehicles. CONTRACTOR shall provide sufficient vehicles, radios, fuel and fareboxes required for the provision of ADA Complementary Paratransit services as identified in this Agreement and the associated RFP.

Vehicles shall be parked in a secured location(s) in Lewiston or Auburn, or within a LATC approved location within the Lewiston-Auburn service area. CONTRACTOR shall provide maintenance of vehicles, including but not limited to radios and camera systems, by ensuring repairs are completed in a timely manner. Specifically, CONTRACTOR shall be responsible for the following:

a. CONTRACTOR shall utilize appropriate computer software for scheduling, recording and monitoring of maintenance. Utilizing said software, employees will flag regular preventive maintenance intervals as per vehicle manufacturer recommendations. CONTRACTOR will optimize the scheduling of vehicles for preventive maintenance and other repairs so as not to impede the effective delivery of service. CONTRACTOR shall provide LATC access to its maintenance records upon request.

b. CONTRACTOR shall clean vehicles of all interior litter and debris on a daily basis. Exterior of all vehicles shall be washed a minimum of once weekly, but at such frequency as may be required to maintain a clean, inviting appearance. CONTRACTOR will do a detailed or more thorough exterior and interior cleaning on each transit vehicle monthly. LATC will inspect buses to evaluate bus cleaning performance.

c. Each Revenue Vehicle must receive a daily pre-trip inspection by the bus operator scheduled to operate the inspected vehicle prior to being placed in service and a post-trip inspection at the end of the day. Mid-day relief bus operators shall perform an inspection. CONTRACTOR shall supply daily pre-trip inspection sheets for Revenue vehicles to document the condition of the vehicle. A record of all such inspections shall be kept by CONTRACTOR and a record will be provided to LATC. Pre- and post-trip inspections are to be performed in compliance with FMCSA requirements.

d. CONTRACTOR shall be responsible for licensing Revenue Vehicles with the DMV.

e. CONTRACTOR is responsible for ensuring that all Revenue Vehicles are equipped with a license plate, and that registration and proof of insurance are on board each vehicle.

f. CONTRACTOR shall provide the radio base station and maintain LATC-owned radios on LATC-owned transit vehicles.

g. CONTRACTOR shall provide a computer aided dispatch system to develop, deploy
and support passenger information and data solutions for fixed route and ADA
Complementary Paratransit service.

23. Safety, Accident, Incident and Complaint Procedures: CONTRACTOR shall develop,
implement, and maintain formal procedures, subject to LATC review and approval, to
respond to accidents, incidents, service interruptions, and complaints. A written copy of the
procedures will be provided to LATC within 60 days of initiation of this Agreement. Such
occurrences to be addressed include, but are not necessarily limited to, vehicle
incidents/crashes, passenger injuries, passenger disturbances, in-service vehicle failures, lift
failures of buses in service, fixed-route buses operating more than ten (10) minutes behind
schedule, and ADA paratransit vehicles operating more than fifteen (15) minutes behind
schedule. CONTRACTOR shall maintain a formal log of all complaints received and track
resolution.

All traffic incidents/crashes involving transit system vehicles, irrespective of injury, shall be
reported to LATC and to local law enforcement, as appropriate. CONTRACTOR will advise
such agency of the incident and request a police unit to investigate. LATC shall be notified
in writing by CONTRACTOR of all crashes and incidents resulting in loss or damage to
LATC property within three (3) working days. In cases involving injury, CONTRACTOR
shall notify LATC transit staff immediately upon receipt by CONTRACTOR of such
information. CONTRACTOR shall document total number of accidents on the Monthly
Report to LATC.

CONTRACTOR shall be responsible for the safety of its personnel and for any worker’s
compensation claims that might result from performance of emergency service.

CONTRACTOR shall not be responsible for damage to LATC-owned Vehicles that result
directly from any incident outside of the control of CONTRACTOR while it is performing
emergency services as authorized or directed by LATC.

CONTRACTOR shall be responsible for providing the following reports to LATC relating to
system safety and security:

a. Monthly. -- (A) Security and Emergency Incident Report/Trend Analysis; (B)
   Vandalism/Incident Tracking Report; and (C) employee training sessions. In addition,
   CONTRACTOR shall provide attendance sheet and summary of employee training
   sessions to LATC.

b. Annually. -- (A) Year End Trend Analysis; and (B) other reports as required by LATC
   or by Federal, state, or local agencies.

24. Conferring and Coordinating: CONTRACTOR shall meet, confer, and coordinate on
operations such as Agreement management, complaints, ADA complaints, on-time
performance monitoring, bus maintenance, marketing, and route planning with LATC Transit
Coordinator on a weekly basis.

25. Other Duties: CONTRACTOR shall perform all other work as may be necessary to comply
with the requirements of this Agreement.

26. Dispatching Software and Hardware: CONTRACTOR shall provide scheduling and
dispatching software with enhanced functions. CONTRACTOR shall provide any required
hardware equipment (including replacements) and mounts that are fully utilized and functional
during the contract period. CONTRACTOR shall install all equipment and make fully
operational the scheduling dispatch software inclusive of enhancements within sixty (60) days of initiation of this Agreement.

27. **Passenger Count Data Collection:** CONTRACTOR shall be responsible for providing data collection software capable of collecting and recording passenger type by fare category. CONTRACTOR is responsible for any required software and hardware.

28. **On-Board Video Surveillance Cameras:** CONTRACTOR shall be responsible for the operation and maintenance of on-board video surveillance camera equipment on LATC transit vehicles. CONTRACTOR shall be responsible for managing the video surveillance data stored. LATC shall provide any required notice to riders and placards shall be placed on vehicles with notice of recording.

29. **Records and Reports:** The CONTRACTOR must be familiar with National Transit Database and reporting requirements, and other such requirements, as may be required by LATC and as indicated in Exhibit B, Reporting Requirements. Breakdowns, road calls, missed trips (explaining the cause), and detailed records of all passenger complaints, comments and suggestions received shall be reported to LATC.

LATC shall have the right to assess and audit any and all records associated with the service(s) provided under this Agreement. In addition, authorized regulatory agencies may be authorized to review the CONTRACTOR's service records in accordance with applicable law.

CONTRACTOR shall maintain, at a minimum, the operations records referenced in the RFP as *Exhibit A: Lewiston-Auburn Transit Committee Reporting Requirements*.

LATC reserves the right to establish a standardized format with which CONTRACTOR must comply.

CONTRACTOR shall prepare and maintain the following records and documents, and shall submit the following reports to LATC:

a. **Monthly Summaries.** CONTRACTOR shall prepare monthly summaries of the various required reports in accordance with established reporting schedules. These summaries shall include but are not limited to: mileage, hours, ridership, route-by-route operating data, fare data, accident report, incident report, in-service trouble calls, wheelchair use report, bicycle rack use report, special ridership categories as required, transfers, telephone system data, and other requested reports. This report will present the data by vehicle, service area and total system basis and will include a statement of existing or potential problems and suggested solutions. CONTRACTOR will record and report trip data for LATC. CONTRACTOR will maintain dispatcher’s trip sheets and daily logs for review by LATC. Monthly summary reports shall be submitted to LATC no later than ten (10) days after the end of each month.

b. **Passenger Complaint and Compliment Reports.** CONTRACTOR shall document operational problems, passenger complaints, passenger compliments (whether received directly or through LATC general comments). The report must describe any action taken regarding these problems or complaints. Documentation shall be in place on the day following identification of the operational problem or receipt of such passenger complaint. CONTRACTOR shall address all passenger complaints in accordance with the established complaint categories and procedures. All records of passenger complaints are to become a permanent record.
c. Incident and Accident Reports. CONTRACTOR shall, in accordance with the RFP, immediately notify the appropriate local police department, either Auburn or Lewiston, then the Transit Coordinator (or other appropriate LATC management staff if the Transit Coordinator cannot be contacted) in the event of any traffic accident involving personal injury or substantial property damage or any other significant non-routine incident or event occurring in the operation of services.

d. National Transit Database (NTD). CONTRACTOR shall provide the data items to LATC as required by the FTA by December 1 each year for LATC to complete the NTD Systems Reporting Module. CONTRACTOR shall submit to LATC applicable corresponding forms as described in the NTD Systems Reduced Reporting Manual. CONTRACTOR shall report to LATC by December 1 of each year the number of full-time equivalent employees working in the service addressed by this agreement.

e. Financial Reporting Requirements CONTRACTOR shall establish and maintain full and complete books of account for services provided hereunder which are separate from its other operations. Such books of account and accounting procedures shall be established using the accrual basis of accounting and shall be subject to approval, inspection, and audit by authorized employees and agents of LATC.

30. Equal Employment Opportunity (EEO) Affirmative Action Report: CONTRACTOR shall maintain and implement an Equal Employment Opportunity/Affirmative Action Program and policy as required in accordance with FTA guidelines. CONTRACTOR shall provide a copy of said plan to LATC 60 days after signing of the contract.

31. Surveys: LATC may, in its discretion, obtain additional documentation of service using passenger surveys. These surveys may be administered by authorized representatives of LATC or its designee. CONTRACTOR shall ensure the cooperation of all personnel with any operational procedures relating to such surveys, including the distribution of survey questionnaires or other actions necessary to obtain service-related information.

32. Meetings: CONTRACTOR, at a minimum, shall attend regularly scheduled monthly LATC meeting. In addition, CONTRACTOR shall participate in all audits and reviews by fixed route and ADA complementary paratransit operations.

34. Indemnification. CONTRACTOR shall indemnify, defend, protect, and hold harmless LATC, AVCOG, City of Auburn, City of Lewiston, and Maine Department of Transportation, and its officers, directors, stockholders, representatives, subsidiaries, employees, and agents (“LATC indemnitees”), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels’ fees and costs of litigation (“claims”), arising out of the CONTRACTOR’s performance of its obligations under this agreement or out of the operations conducted by CONTRACTOR, including LATC’s active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of LATC. In the event LATC indemnitees are a party to any action, lawsuit, or other adversarial proceeding arising from CONTRACTOR’s performance of this agreement, the CONTRACTOR shall provide a defense to LATC indemnitees, or at LATC’s option, reimburse LATC indemnitees their costs of defense, including reasonable legal counsels’ fees, incurred in defense of such claims. Repair of physical damage that occurs to the buses shall be the sole responsibility of the CONTRACTOR or CONTRACTOR’s insurer.

35. Effect on Agreement. Except as specifically amended hereby, the terms and provisions of the agreement are in all other respects ratified and confirmed and remain in full force and effect
without modification or limitation.

36. **Jurisdiction:** All work done pursuant to any agreement resulting from this Request for Proposals will be governed and enforced by the laws of the State of Maine. Further, the proposer shall abide by all federal, state, and local laws, codes, licenses, agreements, tariffs, bonding, and insurance requirements. No claims for additional payment shall be approved for changes required to comply with any such requirements.

37. **Exhibits and Attachments:** The CONTRACTOR shall conform to the requirements set forth in the Exhibits and Attachments include in RFP #2021-01. And, as a condition of this agreement, the CONTRACTOR must abide by requirements set forth in the Exhibits and Attachments.

38. **Counterparts:** This agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Faxed and emailed copies of manually executed signature pages to the agreement will be fully binding and enforceable without the need for delivery of the original manually executed signature page.

**B. LATC Responsibilities:** LATC, as the owner of the service, shall establish overall operational policy for the service. LATC will periodically consult with CONTRACTOR on operational issues affecting service.

1. **Fuel:** CONTRACTOR shall be required to set up an account with the City of Lewiston Public Works Department for fuel. Fuel invoices shall be sent to the CONTRACTOR for verification of accuracy and then submitted to the Transit Coordinator for payment.

2. **Routing and Scheduling:** LATC shall provide routing and scheduling directives for fixed-route service. CONTRACTOR shall provide routing and scheduling for ADA complementary paratransit.

   CONTRACTOR is expected to assist LATC in planning service changes including providing a driver to test proposed routing. This assistance is not separately billable and is not considered revenue hours, special bus services or additional services. CONTRACTOR may suggest alternatives to any service changes proposed by LATC and may also propose service changes or operating efficiencies it believes are appropriate for more efficient or improved services under this Agreement.

3. **Bus Stops and Bus Shelters:** LATC shall provide bus stops, bus shelters, and related amenities.

4. **Maintenance:** LATC will replace LATC-owned vehicles. CONTRACTOR shall provide parts and labor for scheduled maintenance and other routine maintenance. CONTRACTOR will provide RTA Fleet Management software and any required software to purchase parts.

5. **Tickets/Passes and Schedules:** LATC shall coordinate with CONTRACTOR to develop tickets, passes and Fixed Route and ADA Complementary Paratransit schedules/brochures for distribution by CONTRACTOR.

6. **Advertising and Marketing:** LATC shall coordinate with CONTRACTOR to develop, promote, and distribute advertising and promotional transit materials.
7. **Payment:** LATC shall ensure payment of proper charges within sixty (60) days after CONTRACTOR submission of an accurate monthly invoice and/or billing. CONTRACTOR’s invoice submission for service provided the previous month shall include the required monthly reports and shall be submitted to the Transit Coordinator by the 10th of the month.

All payments from LATC to CONTRACTOR for future services are contingent on and subject to the availability of Maine Department of Transportation (MaineDOT) General Fund funding, Federal Transit Administration (FTA) funds, City of Lewiston and City of Auburn funds, and any other related transit funds to continue the services herein described. LATC cannot obligate funds beyond the current fiscal year. It is the intent of LATC to pay CONTRACTOR for all services provided within the scope of this contract. LATC shall notify CONTRACTOR if such funds will become unavailable or insufficient for the provision of service, such that CONTRACTOR does not operate service for which LATC cannot pay. Notwithstanding any other provision of this Agreement, no LATC General Fund monies shall be encumbered or otherwise obligated. LATC may terminate this Agreement if MaineDOT, FTA, the City of Lewiston, and the City of Auburn or any other transit-related funds are not available or insufficient.

8. **Changes in Level of Service:** The service level set forth in the Cost Proposal is the amount of service to be operated for each corresponding fiscal year. LATC may increase, decrease, or otherwise change the service to be provided. Changes to service levels are provided for as follows:

a. **Emergency Adjustments**
Temporary emergency adjustments in service may be initiated either by LATC or CONTRACTOR only in the event of an emergency or circumstances, which requires a detour or an adjustment in routing or scheduling under circumstances where there is no opportunity for the parties to confer; provided, however, that such adjustments do not constitute a "substantial change" as defined below.

The party initiating the emergency adjustment shall notify the other party immediately of such occurrence. The Transit Coordinator shall specify steps to be taken by CONTRACTOR to notify patrons of the change in routing and/or scheduling necessitated by such emergency adjustments, and/or modifications to the emergency adjustment made by CONTRACTOR.

In making temporary emergency adjustments, the CONTRACTOR shall be liable for any added expenses.

b. **Non-Substantial Changes in Service Level**
LATC, through the Transit Coordinator, may order non-substantial increases, decrease or other alterations to the service upon written notice to the CONTRACTOR. Said notice shall specify the change(s) requested and the effective date(s). CONTRACTOR shall be allowed thirty (30) days to implement non-substantial changes; however, LATC shall endeavor to provide CONTRACTOR with earlier notice whenever possible.

c. **Substantial Changes in Service Level**
Definition: Any proposed change in the service level shall be deemed a "substantial change" if such results in one or more of the following conditions:
1) An increase of 3% or more in revenue vehicle hour’s system-wide, as computed from the Beginning Service Level;

2) A decrease of 3% or more in revenue vehicle hour’s system-wide, as computed from the Beginning Service Level;

3) The cumulative total of non-substantial service changes over a period of time that results in a service level either more than 3% above, or less than 3% below the established Beginning Service Level.

Notice: CONTRACTOR shall be given no less than thirty (30) days written notice of the intent to order such substantial changes and shall have an opportunity to be heard prior to the adoption of such an order. Such order shall not be effective sooner than ninety (90) days from the date of adoption, unless mutually agreed otherwise in writing by both parties.

Compensation: Any substantial change to the service level, as defined above, shall be cause for renegotiation of the CONTRACTOR Cost Proposal.

9. Facilities: LATC shall provide the following operating and bus facilities:

<table>
<thead>
<tr>
<th>Base Operations</th>
<th>Facility Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bus Transfer Center</td>
<td>24 Great Falls Plaza</td>
</tr>
<tr>
<td></td>
<td>Auburn, Maine 04210</td>
</tr>
<tr>
<td>Bus Transfer Center</td>
<td>111 Bates Street</td>
</tr>
<tr>
<td></td>
<td>Lewiston, Maine 04240</td>
</tr>
</tbody>
</table>

a. LATC will be responsible for maintenance and upkeep of the facilities, including any capital upgrades.
b. LATC will indemnify, defend and hold harmless CONTRACTOR from any environmental condition, including any condition arising from the release of hazardous material, at any of LATC’s facilities existing prior to CONTRACTOR’s occupancy of such facilities.
c. LATC will provide property insurance for all existing facilities.

10. Vehicles and Equipment: LATC will provide all revenue vehicles for fixed route operations to CONTRACTOR. LATC will provide one Gray Manufacturing 72,000 lb. capacity vehicle lift for maintenance of the revenue fleet. CONTRACTOR will provide all revenue vehicles for ADA complementary paratransit operations. CONTRACTOR will provide non-revenue vehicles, tools and equipment for maintenance of LATC vehicles and CONTRACTOR vehicles. CONTRACTOR will be responsible for all maintenance costs, including but not limited to parts, lubricants and oils for revenue vehicles. CONTRACTOR will provide tires for all fixed route vehicles. LATC will supply all fuel for revenue vehicles.
EXHIBITS
EXHIBIT A
LEWISTON-AUBURN TRANSIT COMMITTEE
REPORTING REQUIREMENTS

RECORDS AND REPORTING

I. General Provisions

A. The Contractor shall maintain all project records as requested by LATC.
B. Contractor shall maintain all books, records, documents, accounting ledgers, and similar materials relating to work performed for LATC pursuant to this RFP on file for at least three (3) years following the date of final payment to Contractor by LATC. The above records retention requirement shall include daily drivers logs, trip tickets, vehicle trip sheets dispatch records and any data summaries compiled by the Contractor as well as all other books, records and documents. Any duly authorized representatives of LATC shall have access to such records for inspection, audit and copying at reasonable times during Contractor's usual and customary business hours.
C. All project records prepared by the Contractor shall be owned by LATC and shall be made available to LATC at no additional charge.
D. Summary reports shall be provided monthly to LATC. Said monthly reports shall be received no later than the 10th day of the following month.
E. The electronic format to be used for operating reports and monthly summaries shall be developed by the Contractor and approved by LATC.
F. The Contractor’s submittal of reports to LATC shall be interpreted as certification that all information is accurate.

II. Daily Records

A. Fixed Route

1. Fixed Route vehicle trip sheets shall be legibly maintained by drivers and shall include but not be limited to the following information:
   a. Route name and vehicle number.
   b. Total daily passenger counts, by fare type, and by passenger category.
   c. Daily mileage by vehicle, including mileage leaving and at return to base. Mileage shall be measured in tenths of a mile.
2. Contractor shall make all vehicle trip sheets available to LATC on a periodic basis as shall be requested by LATC. Said trip sheets shall be maintained, labeled and arranged chronologically by day. Appropriate summary documents shall be included with the related vehicle trip sheets.
3. Contractor shall be responsible for producing an actual count of fixed-route riders provided by each route.

B. ADA Complementary Paratransit

1. ADA paratransit dispatcher logs shall be maintained daily and shall include but not be limited to the following information:
   a. Name, address, and telephone number of the user requesting service.
   b. Passenger's destination and the requested arrival time at the destination.
   c. Identification number of vehicle and driver responding to the trip request.
   d. Estimated passenger pick-up time.
   e. Actual passenger pick-up time.
2. A daily report summarized monthly of:
   a. Total trip request calls.
   b. Number of trip denials.
   c. Reason for trip denials.
   d. Number of trips scheduled.
   e. Identification of “No Shows.”

3. Trip Information
   a. Customer name.
   b. Vehicle used.
   c. Trip origin and destination.
   d. Scheduled pick-up time.
   e. Actual pick-up time.
   f. Actual arrival time (at destination).

4. Driver – Vehicle Information
   a. Shift including total hours.
   b. Revenue hours.
   c. First pick-up and last drop off for each shift.
   d. Indicating times of lunches, breaks, road calls and any other service interruptions.

5. Telephone Reports
   a. Percent of calls with hold times less than 3 minutes
   b. Percent of calls with hold times less than 5 minutes
   c. Number of abandoned calls

6. Unusual Occurrences
   a. Wait times.

III. Monthly Summaries - citylink Transit Services

A. The Project Manager shall prepare and submit to LATC a monthly summary report within ten (10) working days after the end of the operating month to receive reimbursement for the prior month's service. Monthly summary reports shall include, but not be limited to:

   1. Monthly totals of the operating data, documenting any discrepancies in the reported number of passengers carried, VRM, VRH, VOMS, and the amount of fares and transfer slips collected by the operator.
   2. Monthly summary of daily operator and dispatcher logs as relevant back-up information to the monthly summary report.

B. The Project Manager shall also document operational problems or passenger complaints and describe any action taken regarding these problems. Passenger complaints related to safety or serious operational deficiencies shall be reported to LATC no later than the next working day following Contractor's receipt of complaint.

C. Reports for LATC services shall include the following information at a minimum:

   1. Actual count of passengers by mode.
   2. Passenger data by fare type and passenger category.
3. Total vehicle miles.
5. Total vehicle hours.
6. Vehicle revenue hours.
7. Fares collected.
8. Transfers.
9. Count of no-shows by ADA paratransit passenger.
11. Detail of any fixed route missed runs.
12. Detail of any ADA paratransit missed trips.
13. Data should show monthly summary and be broken down by day.
15. Fuel consumption.
16. Road calls and tow calls.
17. ADA paratransit on-time and telephone wait time samples.
18. Tabulations and descriptions of the types and nature of complaints and follow-up actions taken.

IV. National Transit Database (NTD) The Contractor shall be responsible for collecting operating data required by for the NTD and other pertinent ridership information. NTD requirements entail a high level of financial and operational data. The Contractor shall be responsible for on-board operational data sampling utilizing an FTA-approved sampling methodology. All source documents shall be maintained for the duration of the Agreement and released to LATC following final payment. The Contractor may be subject to an audit by LATC and/or FTA at any time within the Agreement period. Annual NTD data is due to LATC no later than December 1st. Safety and Security reports should reflect all accident information, with indication to accidents that require a tow-away, transport of passenger or employee to hospital, damage over $25,000, and fatalities.
LATC seeks to provide public transportation in a professional, courteous and timely manner. Minimum performance standards include, but are not limited to, the standards listed below.

I. Fixed Route Service
   A. Missed Runs and Trips- All runs shall be operated per the transit schedules issued by LATC. Contractor will not be penalized for missing runs due to a lack of LATC provided buses. However, the Contractor will be penalized for all other reasons, including mechanical failures, untrained drivers causing buses to go down, missed fueling, driver caused accidents, and any other reasons for missed runs. Missed trips are defined as any instance where scheduled service is not performed along a given route for a period greater than 15 minutes, including late trips, where a passenger stop is skipped resulting in a passenger missing a trip, where passenger stops are skipped due to a vehicle going off route, or where a route fails to start its first scheduled trip of the day by more than 5 minutes.

   B. Accident Reporting- The Contractor shall be assessed liquidated damages for each incident of not reporting accidents in writing to LATC Transit Coordinator within six (6) hours of the incident.

II. Paratransit Service
   A. On-Time Performance- Contractor shall meet passenger pickup times for 95% of all passenger service requests based on LATC’s pickup window of 15 minutes before and 15 minutes after requested time. On-time performance statistics (showing full calculations and definitions) shall be provided on the Contractor’s monthly report submitted to LATC and shall serve as the basis for this performance standard in addition to any on-time performance evaluation findings conducted by LATC. Contractor will be considered on-time if lateness is due to train delays, traffic delays, accidents not involving ADA paratransit buses, or boarding of wheelchairs provided Contractor documents each delay by route number, time of day and reason for delay.

   B. Excessive Ride Time- Any trip that exceeds 10% or longer than the time it would take the rider to make the same trip on the fixed route bus, including travel time to get to the bus stop and travel time from the bus stop to the final destination, as determined using Google Transit, will be considered an Excessively Long Trip.

   C. Missed Trips- Failure to pick up or more than sixty (60) minutes late from the scheduled pick-up time.

III. Required Reporting
   A. Summary reports shall be provided monthly to LATC, as detailed in Exhibit B. Said monthly reports shall be received no later than the 10th day of the following month. The format (preferably electronic) to be used for operating reports and monthly summaries shall be developed by the Contractor and approved by LATC. The Contractor’s submittal of reports to LATC shall be interpreted as certification that all information is accurate.
EXHIBIT C
Route Information

http://www.avcog.org/884/Maps-Schedules
### EXHIBIT D

#### Fleet List

<table>
<thead>
<tr>
<th>Vehicle Number</th>
<th>Year/Make/Fuel</th>
<th>Passenger Capacity Seats</th>
<th>Passenger Capacity Wheelchair</th>
<th>Condition</th>
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<tbody>
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<td>32+24</td>
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<td>Good</td>
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<td>32+24</td>
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<td>2011 - Gillig 35' low-floor, heavy duty - diesel bus</td>
<td>32+24</td>
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<td>Fair</td>
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<td>Fair-Poor</td>
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<td>2008 – Chevrolet Eldorado C5500 – diesel bus</td>
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<td>2</td>
<td>Fair-Poor</td>
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<td>0502</td>
<td>2005 – Chevrolet Eldorado 290 – gas bus</td>
<td>26</td>
<td>2</td>
<td>Fair-Poor</td>
</tr>
</tbody>
</table>
FEDERALLY REQUIRED CLAUSES

FEDERAL TRANSIT ADMINISTRATION

REQUIRED & MODEL CONTRACT CLAUSES

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The most recent version of these clauses will apply.

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4. Cargo Preference Requirements
5. Seismic Safety Requirements
6. Energy Conservation Requirements
7. Clean Water Requirements
8. Bus Testing
9. Pre-Award and Post Delivery Audit Requirements
10. Lobbying
11. Access to Records and Reports
12. Federal Changes
13. Bonding Requirements
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15. Recycled Products
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17. Contract Work Hours and Safety Standards Act
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1. **FLY AMERICA REQUIREMENTS**

49 U.S.C. § 40118

41 CFR Part 301-10

**Applicability to Contracts**

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

**Flow Down Requirements**

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

**Model Clause/Language**

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

**Fly America Requirements**

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

2. **BUY AMERICA REQUIREMENTS**

49 U.S.C. 5323(j)

49 CFR Part 661

**Applicability to Contracts**

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $100,000).
Flow Down
The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The $100,000 threshold applies only to the grantee contract; subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language
The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

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

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

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

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

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

Date

Signature

Company Name

Title

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

Date __________________________________________

Signature ______________________________________

Company Name __________________________________

Title ___________________________________________

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


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

Date __________________________________________

Signature ______________________________________

Company Name __________________________________

Title ___________________________________________

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

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

Date __________________________________________

Signature ______________________________________

Company Name __________________________________

Title ___________________________________________
3. 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.

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.

3. 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 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.
4. CARGO PREFERENCE REQUIREMENTS
46 U.S.C. 1241
46 CFR Part 381

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

Flow Down
The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language
The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

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

5. SEISMIC SAFETY REQUIREMENTS
42 U.S.C. 7701 et seq. 49
CFR Part 41

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

Flow Down
The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language
The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.
Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6. 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.

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.

7. 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.
8. BUS TESTING
49 U.S.C. 5323(c)
49 CFR Part 665

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

Flow Down
The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language
Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

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

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

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

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

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

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS
The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.
The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: 

Signature: 

Company Name: 

Title: 

9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323

49 CFR Part 663

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

Flow Down
These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language
Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third-party contractors.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"
49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

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

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

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

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

**BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT**

*(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at $100,000.)*

**Certificate of Compliance**

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: 

Signature:  

Company Name:  

Title:  

**Certificate of Non-Compliance**

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended,
but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: 

Signature: 

Company Name: 

Title: 

10. 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.

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.]


- 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.


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

11. 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"

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.

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(j)(11).

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

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

<table>
<thead>
<tr>
<th>Contract Characteristics</th>
<th>Operational Service Contract</th>
<th>Turnkey</th>
<th>Construction</th>
<th>Architectural Engineering</th>
<th>Acquisition of Rolling Stock</th>
<th>Professional Services</th>
</tr>
</thead>
</table>

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<table>
<thead>
<tr>
<th>I State Grantees</th>
<th>None</th>
<th>Those imposed on state pass thru to Contractor</th>
<th>None</th>
<th>None</th>
<th>None</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Contracts below SAT ($100,000)</td>
<td>None</td>
<td>None unless non-competitive award</td>
<td>Yes, if non-competitive award or if funded thru 5307/5309/5311</td>
<td>None</td>
<td>None unless non-competitive award</td>
<td>None</td>
</tr>
<tr>
<td>b. Contracts above $100,000/Capital Projects</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>None unless non-competitive award</td>
</tr>
<tr>
<td>II Non State Grantees</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>a. Contracts below SAT ($100,000)</td>
<td>Yes</td>
<td>Those imposed on non-state Grantee pass thru to Contractor</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>b. Contracts above $100,000/Capital Projects</td>
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<td></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Sources of Authority:
1 49 USC 5325 (a)
2 49 CFR 633.17
3 18 CFR 18.36 (i)

12. FEDERAL CHANGES

49 CFR Part 18

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

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.

13. BONDING REQUIREMENTS

Applicability to Contracts
For those construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

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

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

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

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

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

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

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

Flow Down
Bonding requirements flow down to the first tier contractors.

Model Clauses/Language
FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

Bid Bond Requirements (Construction)
(a) Bid Security
A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

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

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

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

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

**Performance and Payment Bonding Requirements (Construction)**

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

(a) Performance bonds

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

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

(b) Payment bonds

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

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

   (ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
(iii) Two and one half million if the contract price is more than $5 million.

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

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

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

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

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

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

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

1. The penal amount of payment bonds shall equal:

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

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

   (iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements
The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

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

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

**Warranty of the Work and Maintenance Bonds**

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

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

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**14. 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.

15. RECYCLED PRODUCTS

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

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

Flow Down
These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language
No specific clause is mandated, but FTA has developed the following language.

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

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application
The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.
The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

**Clause Language**

**Davis-Bacon and Copeland Anti-Kickback Acts**

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

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

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

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

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

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

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

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

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

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

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

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

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

(ii) **Trainees** - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and
Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).


17. 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.

18. [RESERVED]

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts
Applicable to all contracts.

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.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS

31 U.S.C. 3801 et seq.
49 U.S.C. 5307

Applicability to Contracts
These requirements are applicable to all contracts.

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

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

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 contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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

j. **Termination for Convenience of Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of 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.

### 22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

**Background and Applicability**


The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed $25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). 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 {insert agency name}. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to {insert agency name}, 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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**23. PRIVACY ACT**

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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.

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.

24. CIVIL RIGHTS REQUIREMENTS

29 CFR Part 1630, 41 CFR Parts 60 et seq.

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

25. 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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**26. PATENT AND RIGHTS IN DATA**

37 CFR Part 401
49 CFR Parts 18 and 19

**Applicability to Contracts**

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

**Flow Down**

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

**Model Clause/Language**

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory
printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and
expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the
Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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27. 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.)

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.

28. 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 __%. 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 [insert agency name] deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

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

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

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

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

29. [RESERVED]

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E

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

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 (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING
Applicability to Contracts
The Drug and Alcohol testing provisions apply to Operational Service Contracts.

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).